SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO
CASE NO: 980864

- x
THE PEOPLE OF THE STATE OF CALIFORNIA, et al.,

Plaintiff,

vs.

PHILIP MORRIS, INC., et al.,

Defendant.
- x

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Videotaped Deposition of EDMUND CONGER LEARY

Volume II

(Taken by Plaintiff)

Winston-Salem, North Carolina

July 23, 1998

Reported by: Marne L. Hamilton
Notary Public

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Videotaped deposition of EDMUND CONGER LEARY, taken by the Plaintiffs, at Womble, Carlyle, Sandridge & Rice, 200 West Second Street, Winston-Salem, North Carolina, on the 23rd day of July, 1998, at 9:00 a.m., before Marne L. Hamilton, Notary Public.

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1 P R O C E E D I N G S

2 VIDEOGRAPHER: Today is July 23rd, 1998. The
3 time is 9:00 a.m. This is the beginning of tape number
4 five.

5 Q. Mr. Leary, do you understand that you're still
6 under oath?

7 A. Yes, I do.

8 Q. Mr. Leary, one item I didn't mention talking
9 about just depositions themselves yesterday at the
10 beginning was that after this deposition, do you understand
11 that you will receive a copy of the transcript?

12 A. Yes.

13 Q. And do you understand that you will be entitled
14 to make any changes to that transcript?

15 A. Yes.

16 Q. Do you understand, however, that at trial, if
17 there is one, opposing counsel can comment on any changes
18 that you do make to the transcript?

19 A. Okay.

20 Q. Do you consider yourself an expert on the
21 cigarette advertising code?

22 A. I wouldn't say I'm an expert on it. I'm familiar
23 with it.

24 Q. Well, could you give me an overview as to what
25 the cigarette advertising code is?

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A. It's a group of rules and principles and guidelines that lay out the way the tobacco industry agrees to market its products.

Q. And what are some of the major components of those rules and guidelines?

A. They describe the type of people that are in our ads, the type of -- and their age, the type of activities they are shown doing, that one also speaks to -- just speaks to the general tone of the advertising. It speaks to sampling of cigarettes and the guidelines that we'll use to conduct our sampling to adult smokers. I believe it speaks to rules about the use of the mail to deliver cigarettes. And I can't recall anything else right now.

Q. When was the last time that the cigarette advertising code was modified, if it was modified?

A. I believe it was modified a few years ago to place more guidelines about the use of the mail, if I'm not mistaken.

Q. And when was the cigarette advertising code adopted?

A. I believe it was adopted in the -- I'm not sure. I think it was in the '70s, or perhaps the early '80s. I'm not sure exactly. Maybe it was in the '70s. It's been in effect since I have been employed by Reynolds, I'm aware of that.

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Q. And what was the purpose behind the cigarette advertising code?

MR. BEACH: Object to the form of the question, lack of foundation.

Q. Was there a purpose behind the cigarette advertising code?

MR. BEACH: Same objection.

A. I wasn't involve in the development of the advertising code, so I'm not sure why it was designed. I know how it is used today in my -- in my activities.

Q. Well, would you consider yourself an expert in the application of the cigarette advertising code?

A. I wouldn't consider myself an expert. I'm familiar with it and I use it to conduct business.

Q. Do you use the principles and guidelines of the cigarette advertising code on a regular business -- on a regular basis in your business?

A. Yes.

Q. Well, what would regular basis be?

A. All the time.

Q. With respect to some of the elements that you have just mentioned, do you have any knowledge as to why those are part of the cigarette advertising code, such as issue of sampling the cigarettes?

MR. BEACH: Objection to the form of the

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1 question, lack of foundation.

2 A. Can you repeat it, please.

3 Q. Yeah. What is the purpose of having regulations

4 with respect to the sampling of cigarettes as under the

5 cigarette advertising code?

6 MR. BEACH: Same objection.

7 A. It provides guidelines and formalizes the

8 agreement among -- within the tobacco industry of how we

9 will market our products, and it's a formalization of the

10 way we do business.

11 Q. But do you have any knowledge as to why those

12 guidelines, specifically with respect to sampling of

13 cigarettes, were adopted by the industry?

14 MR. BEACH: Same objection.

15 A. Again, I wasn't part of the industry or involved

16 at all in the adoption of the code itself. But during the

17 period I've worked at Reynolds, I think there have been

18 adjustments to it to further clarify and in some instances

19 tighten some of the things that we would do to clarify what

20 we will and will not do. I think in the case of direct

21 marketing, there may have been adjustments to -- Well, I

22 know, for instance, in the case of direct marketing, we do

23 not send anything to anybody unless they confirm that they

24 are a smoker 21 years of age and older and wish to receive

25 cigarette samples or cigarette-related items in the mail.

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1 At various points and time the code has been adjusted to
2 reflect changes in the way we do business and to lay out,
3 for public consumption, the way we operate our business.
4 And it provides guidelines for those of us within the
5 industry, and I think it also provides a document that
6 others can review to see how we do our business.
7 Q. Well, you have mentioned provisions with respect
8 to use of mail to deliver cigarettes.
9 A. Uh-huh.
10 Q. And those provisions were at least changed, in
11 part, during your time as an employee?
12 A. I believe so, yes.
13 Q. Do you have any knowledge as to why those
14 particular provisions were modified?
15 A. Again, they were modified I think as time has
16 gone on. For instance, we moved the age at which we would
17 conduct marketing development activities from the legal age
18 of smoking of 18 to 21 year old adult smokers to provide a
19 buffer and to further make sure that our efforts were
20 interesting smokers of a certain age. And I think through
21 time, due to changes in marketing practices, the thing has
22 been clarified. I mean, marketing has evolved over time,
23 and the code has been adjusted accordingly to make sure
24 that the way we do business is uniform across the industry
25 and is done in a responsible manner.

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Q. Well, specifically with respect to the use of mail to deliver cigarettes, were there any concerns raised prior to the change enacted by the cigarette industry that teenagers were receiving these cigarettes through the mail?

MR. BEACH: Objection to the form of the question, speculation, lack of foundation.

A. I think it's obvious over the past fourteen years that the level of scrutiny and criticism of the tobacco industry and its marketing practices has heightened the need to be absolutely clear on how we market our products and to ensure that there are safeguards and adequate parameters so that not only are we conducting our business in a responsible and legal manner, but again it's done uniformly. And, you know, as criticism has increased, we've adjusted our marketing and fall not only within the guidelines of the law, but to, in some instances, accommodate critics to make sure that we're doing -- are conducting our business in a responsible manner.

Q. Well, are you personally aware of any reports that teenagers may have received in the past, during your tenure as an employee of R.J.R. Reynolds, either promotional materials of R.J.R. Reynolds or R.J.R. Reynolds cigarettes through the mail?

A. I have heard of that happening.

Q. Does the cigarette advertising code govern any

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1 themes that are used in advertising?

2 MR. BEACH: Objection to the form of the question

3 on the grounds it's ambiguous. I also think it's

4 fundamentally unfair to ask this gentleman about documents

5 you're not willing to apparently put in front of him. Why

6 don't you put a copy of the cigarette advertising code in

7 front of this witness so he can respond to your question

8 fully and completely, Mr. Cassidy?

9 Q. Are you aware of whether the cigarette

10 advertising code governs any themes that are used in

11 advertising?

12 A. What do you mean by theme?

13 Q. Well, maybe I'll start this a different way

14 slightly. When you apply the cigarette advertising code on

15 a regular basis, do you have a copy of it printed out in

16 front of you, or do you operate from your knowledge of the

17 cigarette advertising code?

18 A. I have easy access to a copy of the code, but

19 generally I rely on my general knowledge of it.

20 Q. Okay. I'll give you an example of a theme,

21 humor, is -- and I'll go back to my general question, does

22 the cigarette advertising code govern any themes used in

23 cigarette advertising?

24 MR. BEACH: Same objection to this question. I

25 think it's unfair that you're asking him questions about

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the specific content of it, because apparently you're unwilling to place a copy in front of him.

Q. I'm just -- I'm trying to -- I'm not trying to look at the legalistic provisions of the code, I'm just trying to get to your general understanding then. So maybe I'll rephrase the question. Do you have a general understanding of the cigarette advertising code as to whether it applies to any themes used in advertising?

A. I can recall parts of the code about cigarette advertising shall not show that cigarettes are essential to success, or -- I believe it goes on to say or attraction to the opposite sex. And I believe it also speaks to we shall not use ads that show people smoking in an exaggerated manner or in the course of activities that require extreme stamina or athletic ability. As to your other question of does it govern anything like humor, I've never heard that.

Q. Well, is humor a theme that's used in cigarette advertising?

A. It can be.

Q. Is humor a theme that's used in advertising for Winston cigarettes?

A. It can be. Yes.

Q. Have you used humor as a theme in current advertisements for Winston cigarettes?

A. Yes.

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Q. Why don't we take a look at the Penthouse magazine which was previously used. And at the top I've marked with blue tabs names of different ads, if you could turn to the name that's identified as Winston.

MR. BEACH: Can we identify which exhibit this is for the record, please?

MR. CASSIDY: Well, I think we -- We have not identified the magazine itself as an exhibit, we identified an advertisement within the magazine. Would you like to change the identification to the magazine itself?

MR. BEACH: I think that would be appropriate.

MR. CASSIDY: I'll stipulate to that. Do you understand what we have just done?

COURT REPORTER: Uh-huh.

MR. CASSIDY: So we'll call this now Exhibit #6, and within Exhibit #6 we're now looking at the Winston ad.

A. Okay. So you don't want to put a sticker on this ad?

Q. That's correct. Have you had a chance to look at the ad?

A. Yes.

Q. I'd like to put it on display here for the video camera. The copy on this ad says never trust anyone who calls you friend or pal. And by copy, what am I referring to? What does that word mean?

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A. By copy?

Q. Yeah.

A. Words.

Q. Okay. And what's the other major component of this ad?

A. No additives, 100 percent tobacco, true taste, and a picture of a person.

Q. Okay. So is it a combination --

A. As well as a warning statement that says Surgeon General's warning, cigarette smoke contains carbon monoxide.

Q. Is it fair to say there's three elements to this ad, the Surgeon General's warning statement, R.J.R. Reynolds words or copy, and an image of the person?

A. If you ask -- If the question is what are the major components of this ad, I would say that there is a headline, there is subcopy, there is a visual, the product is depicted, and there's a warning statement, Surgeon General's warning statement. In addition to that, there's a statement that says there are no additives in our tobacco. And in addition to that there's a tar and nicotine legend. And in addition to that there's a copyright.

Q. Okay. Is this an example of humor used in cigarette advertising?

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A. Well, humor is a subjective thing. Some people think -- Some adult smokers think some things are funny and some don't. In this instance, the way I would describe this ad in the context of the No Bull campaign is that Winston is attempting to develop a positioning that we describe and is described here with the words "No Bull," which means true to one's self, what you see is what you get, and reject artificiality. In this case this ad is pointing out the fact that at times you will run into people who do not have any basis for which to be your friend or pal, but will throw those words around as sort of a not particularly sincere use, like let me tell you something, friend. And here we're just pointing out that a lot of times you will hear people call -- use those words to refer to somebody when they may not be your friend or pal. For instance, in this case this looks like it could be perhaps a used car salesman who could say I've got just the car for you, pal. And we're pointing out that oftentimes in that case what you see is not what you get.

Q. Well, do you consider this funny, just the copy itself with the visual?

A. I think it's a -- I think it's a clever statement about one aspect of every-day life that there may be some insincerity in.

Q. Well, I believe you said that in the visual it

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1 looks like perhaps a used car salesman.

2 A. Could be.

3 Q. Did you go to this photo shoot?

4 A. No.

5 Q. Okay. Was it the intention, though, of R.J.R.
6 Reynolds to depict a person that the reader would connotate
7 in their mind with being a used car salesman when looking
8 at this ad?

9 A. I think that probably was part of it. He -- I
10 mean, there is no indication, I don't see the word car
11 anywhere, but that looks like it could be a car sitting
12 there. But I think the intention was to depict someone
13 that you might -- that might well be likely to call you
14 friend or pal when he doesn't know you at all.

15 Q. Isn't there an art direction plan that's created
16 for each one of these ads?

17 A. Yes.

18 Q. And as part of that art direction plan, looking
19 at this ad, isn't it apparent that the photographer was
20 supposed to photograph someone on what appears to a car lot
21 with the sign saying "Special" behind him?

22 MR. BEACH: Objection. You haven't put the art
23 direction plan in front of the witness. I don't know how
24 he's supposed to answer that question.

25 Q. Well, I think -- If that's not a fair question,

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you tell me.

MR. BEACH: It was in the context of what was in the art direction plan. You haven't put it in front of him. That's all I'm saying, Mr. Cassidy.

MR. CASSIDY: I don't possess the art direction plan.

MR. BEACH: Well, I can't solve that problem for you right now.

A. The intention of this ad is what I said it is, is to point out the insincerity that sometimes happens in every-day life where someone who doesn't know an individual from -- at all will refer to them as a friend or pal. And this ad is pointing out that perhaps those that call you friend or pal when they don't really have a basis to do that, are those that you need to be most aware they may not be your friend or pal. And in this case I think it does show that this person is a salesman of some sort, and that was the intention of the ad, is to show someone that, you know, might well employ those kind of terms.

Q. Okay. Thank you. Why don't you take the exhibit down. Now, is another theme that's used -- Is sex used as a theme in cigarette advertising?

A. In the case of Winston, we show -- we use both males and females. Sex is a big word. I mean we have males and females sometimes making comments about

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1 relationships, so you really have to define what you mean
2 by is sex used. What do you mean by sex?
3 Q. Well, do you have an understanding just of the
4 concept sex?
5 A. There's a lot -- I have a lot of interpretations
6 of the word sex. We use models of both sexes in our ads.
7 We use ads and situations that refer to relationships
8 sometimes between the sexes. But sex can mean anything
9 from the act to relationships between adults of opposite
10 sexes.
11 Q. Well, do you ever have any ads that refer to more
12 than just the relationship between adults and involve a
13 sexual theme?
14 A. Could you restate that, please.
15 Q. Do you ever have any ads for Winston cigarettes
16 that refer to more than just the relationship between the
17 models in the image and have a sexual content?
18 A. I'm still a little unclear, because it seems to
19 me what you're saying is do you have ads that both show
20 relationships as well as show sex between the models.
21 Q. No. I have asked you if sex is used in Winston
22 advertising. And you said, well, it's too broad of a word,
23 but we do have the possibility of ads that refer to
24 relationships.
25 A. Right.

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Q. Is there any other way that sex might be used in Winston ads aside from displaying the models and referring to relationships?

MR. BEACH: Let me object to the form of the question on the grounds that the witness has already expressed confusion over your use of the word sex in the connotation, so subject to that objection as to the ambiguity of your question. Now she'll have to reread it.

MR. CASSIDY: I think he got it.

A. Well, you've asked me about sex. I've identified one area that we do use is about relationship. Are there others? I'd have to go through the whole pool of ads that we've run, and I can talk to you about each and every one and what its message is.

Q. Okay. Well, let's --

A. It's just a broad question of --

MR. CASSIDY: Why don't we mark this as the next exhibit.

(Exhibit #20 marked for identification.)

MR. BEACH: Do you have copies of this, Mr. Cassidy.

MR. CASSIDY: I have a copy of the advertisements.

Q. Why don't you take a look at this exhibit, and I've flagged different tobacco industry advertisements

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within that.

A. Okay. Well, do you want me to just start at the beginning?

Q. Yeah. And I think -- I just want you to look at the tobacco ads within it and if it will help you maybe by just going to the ones that are flagged.

A. Uh-huh.

Q. In looking at the advertisements that you have seen there, can you identify how many ads are placed within that magazine by cigarette manufacturers? And also just state the brand name, please, and the company behind that brand.

A. There's a Marlboro ad in here.

MR. BEACH: Mr. Leary, let me interject. You'll have to check each page since -- if he's asking you to identify all of them, he's only flagged certain ones and we don't know that those are all that are in there.

MR. CASSIDY: I'll stipulate that the only ads in there are the ones that are marked. I won't ask about a page that's not flagged.

A. There's a Marlboro ad.

Q. And Marlboro is produced by which company?

A. Marlboro is produced by Philip Morris. It says "Come to Marlboro Country," with the Surgeon General's warning. Here's one for Lucky Strike, it says "An American

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1 Original Since 1871," that's by Brown and Williamson with
2 the Surgeon General's warning. Here's one from Kool, says
3 "Nu Look," I think it's referring to a new package, that's
4 from Brown and Williamson. And here's one from Winston, it
5 says "Do blondes have more fun? If you can find a real
6 one, ask her," Surgeon General's warning. Here's one for
7 Kamel cigarettes from R.J.R. Reynolds.
8 Q. And was that one for specifically the Red Camel
9 brand?
10 A. I believe this is Red Camel.
11 Q. Okay.
12 A. And here's one for Camel cigarettes.
13 Q. Okay. And that, again, is sold by R.J.R.
14 Reynolds?
15 A. That's right.
16 Q. Okay. So correct me if I'm wrong here, we have a
17 total of six ads by cigarette companies placed within this
18 edition of Spin magazine that I have flagged for you?
19 A. I think I count six too.
20 Q. Okay. Does that strike you as a fairly high
21 percentage of advertisements from tobacco manufacturers to
22 have within one magazine?
23 A. I don't have a perspective on that. There could
24 be over 150 pages in here. I suspect there's probably -- I
25 don't know, I'd have to count them, but I'd suspect there's

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1 hundreds of advertisements in this. So is six too many? I
2 don't know.
3 Q. Well, is there any particular reason why R.J.R.
4 Reynolds places advertisements for its products in Spin
5 magazine?
6 MR. BEACH: Let me object to this question. You
7 certainly are going to be entitled to answer this in a
8 second, Ned, but I just want to make a quick statement for
9 the record. Mr. Cassidy, counsel from Lieff, Cabraser, the
10 law firm which you are associated, spent seven-and-a-half
11 hours speaking with the person from R.J. Reynolds Tobacco
12 Company responsible for the placement of advertising in
13 magazines. I consider these questions, therefore, to be
14 outside of the scope of this deposition to the extent that
15 you're -- this is under the 2025 notice in California as
16 well as essentially harassment and a waste of this witness'
17 time when that subject has been well covered by --
18 previously in a deposition by your cocounsel.
19 MR. CASSIDY: Counsel, your speech just took
20 longer than the answer to the question I asked.
21 Q. Mr. Leary, could you please give an answer?
22 A. Could you repeat it?
23 Q. Is there any particular reason why R.J.R.
24 Reynolds has three advertisements in this magazine?
25 A. We develop ads for adult smokers 21 years of age

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or older, and we test them among adult smokers 21 years of age or older. In order to put those ads in front of smokers 21 years of age or older, we advertise in magazines which predominantly reach smokers 21 years of age or older. This magazine falls within that group. We advertise in a number of magazines in order to reach smokers 21 years of age or older, and this is an example of us doing just that.

Q. You used the word predominantly. How do you define the word predominantly?

A. Majority.

Q. So more than 50 percent?

A. I believe so.

Q. Is it fair to say that majority is 51 percent out of a 100 pool?

A. Well, majority could be anywhere from 51 percent to 100 percent.

Q. Okay. So do you then look for magazines that have more than 51 percent of its total readers above age 21?

A. We have a group that selects our magazines. I'm made aware of it in part of that decision process. But we select magazines based on how effective it is at reaching adult smokers over the age of 21. And as I mentioned, they all -- the readership of all of them is over 50 percent 21 years of age and older. Other factors that go into how we

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1 pick our magazines are the editorial content, what is the
2 topic of the magazine, what are the other advertisers in
3 the magazine. So it's a whole host of things that we look
4 at to pick magazines. But I'm not necessarily the person
5 most informed about all that. I think our media department
6 does that specifically with the help of Long, Haymes and
7 Carr. But those are the rules we work under and why we
8 pick the magazines we do.
9 Q. Well, are you personally involved in which
10 magazines are picked for the placement of ads for R.J.R.
11 Reynolds Tobacco Company?
12 A. I can be, yes.
13 Q. Okay. And is not the -- Well, are the ads -- or
14 excuse me -- the magazines that are selected for the
15 placement of ads by R.J.R. Reynolds, is that decision part
16 of the media tactical plan?
17 A. Yes.
18 Q. Okay. And are you not the person that approves
19 the media tactical plan for Winston cigarettes?
20 A. Ultimately I do. We're in a number of magazines
21 and there are changes that happen to that list of magazines
22 occasionally, and I have someone that does that
23 specifically for me in working with the media department,
24 but any significant change I'm involved in.
25 Q. Well, who has the ultimate decision-making

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1 authority as to which magazines Winston ads are placed in?

2 A. I do.

3 Q. Okay. Now, you mentioned some of the factors

4 that are looked at in addition to the age of the readers,

5 and you mentioned editorial content, let's see, I guess

6 topic of the magazine, and other advertisers that advertise

7 in the magazine. Are there any other major categories that

8 you're aware of that are general and applies?

9 A. Well, one major category, which I should have

10 mentioned earlier, is how many adult smokers are in their

11 readership base.

12 Q. Okay. And the definition of adult smokers is?

13 A. Smokers 21 years of age or older.

14 Q. Okay. Now, we did look at the exhibit from --

15 that's of the Penthouse magazine that has the Winston ad

16 within it. Do you consider Penthouse magazine an

17 appropriate magazine in which to place Winston ads?

18 A. Yes.

19 Q. And why is that?

20 A. Because it meets the criteria I laid out before,

21 the majority of the readership -- the majority of the

22 readership is over 21 years of age. I'm not familiar with

23 the specific numbers on Penthouse, but I think a great deal

24 of its readership is made up of smokers, who are the only

25 people we're interested in reaching. The editorial

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1 content. The other advertisers in it. It's -- It's
2 appropriate.
3 Q. Well, how about the content of the magazine
4 itself with respect to images of women? And I'm not going
5 to ask you to look through each page of the magazine.
6 A. No, and I don't intend to look through it. I was
7 just looking at -- I don't buy Penthouse magazine, but I
8 know they're kept behind the counter. In just looking at
9 the cover here it says not to be sold to persons under 18
10 years of age, so in this instance there's already an age
11 restriction that's carried here. We use 21 years of age
12 and older, but there's another reason why Penthouse I think
13 is effective, I don't know whether that's a law, but it's
14 certainly a warning that this should not be sold to people
15 under age, and I think that probably makes it somewhat
16 unique in that there's an age restriction on the sale of
17 it. So there's another reason that it makes.
18 Q. Well, is Patricia Ittermann the person that is
19 primarily responsible for the placement of ads by R.J.R.
20 Reynolds Tobacco Company?
21 A. That's right.
22 Q. Okay. I'm going to read from her deposition
23 testimony that was conducted previously in this case, and
24 she stated --
25 MR. BEACH: Excuse me. Counsel, before you do

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1 that, first of all, that document is subject to a
2 confidentiality order.
3 MR. CASSIDY: Well, isn't this deposition also
4 subject to a confidentiality order?
5 MR. BEACH: Hang on a second, please. Second of
6 all, the corrections to that transcript have not yet been
7 transmitted to the court reporter, therefore, you are
8 not -- whatever you're reading from you do not have a final
9 version of that deposition transcript. For that reason I
10 object to any questions based on the content of that
11 deposition.
12 MR. CASSIDY: Okay. Well, your objection is
13 noted.
14 Q. I'm going to read a statement here. I'm not
15 asking for you to vouch for the accuracy of this statement,
16 but you can tell me if whether this is your understanding
17 of R.J.R. policy. "If the editorial is overly tasteless,
18 has no redeeming value that we can see for its readers,
19 then it wouldn't be an appropriate place we'd want our
20 brands to advertise." Do you think Penthouse magazine is
21 overly tasteless?
22 A. In my own opinion, I can't speak for societal
23 positions, but in my own opinion I think among the adult
24 audience that it's targeted to, I don't think it's
25 tasteless.

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1 Q. Okay. When's the last time you have looked at an
2 edition of Penthouse magazine?
3 A. I don't know. This morning just a second ago.
4 Q. Well, we've looked at -- When's the last time you
5 have looked at the full content of a Penthouse magazine?
6 A. I don't know, maybe a month ago.
7 Q. And when you examined it, you did not believe
8 that content could be described as overly tasteless?
9 A. I think to some people that magazine is probably
10 tasteless. To the adult smokers that choose to purchase
11 that magazine, I suspect they don't -- they don't find it
12 tasteless.
13 Q. Okay. Let's go back to the Spin magazine that's
14 in front of you, and I'll just recap here. We had six
15 advertisements that have been tagged within that magazine
16 by cigarette manufacturers. Why don't we take a look at
17 the advertisement from Winston cigarettes and put that up
18 on the rack. Were you familiar with this ad before I
19 showed it to you today?
20 A. Yes.
21 Q. Did you personally approve this ad?
22 A. Yes.
23 Q. Okay. Is sex used as a theme in this ad?
24 A. No.
25 Q. And what's the basis for your answer?

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A. The basis for my answer is my opinion that -- Well, let me rephrase that. In that -- In that that is a female and that is a sex, I mean there is a person with a sex in it, but in terms of -- Let me just tell you what the ad says.

Q. Okay.

A. The ad says "Do blondes have more fun? If you can have a real one, ask her." The point of that ad is --

MR. BEACH: If you can find a real one.

A. I'm sorry. If you can find -- What did I say? "If you can find a real one, ask her." The point of that ad is speaking to the positioning of Winston, which is No Bull, true to one's self, what you see is what you get, reject artificiality. It's an authentic, real positioning. And what this ad is saying is that there is something unreal, artificial, about the whole concept of dying one's hair, and particularly the popularity of blond hair coloring. And it's backed up by a product point of difference here that's 100 percent tobacco for true taste, which is 100 percent real. So it's sort of a spoof on the whole idea of dying one's hair. And I might ad that because dying one's hair is very popular, and quite a few blonds may well have dyed their hair, but we checked this among adult smokers who, in fact, had blond hair that was dyed, and they found it particularly amusing.

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Q. So humor is an element of this ad?

A. Absolutely.

Q. Okay. But are we making fun of blonds, not necessarily limited to ones that have dyed their hair?

A. That's not my take on it.

Q. Have you ever heard any jokes with respect to blond-haired women?

A. I think I have.

Q. Is this not playing on that theme?

A. Advertising is subjective, and you can read any number of themes in any number of ads. What I'm getting at is the idea behind this ad and what it was executed to do. Is it possible to interpret it as you have? I guess that is a possibility. But the primary punch line of this ad is "if you can find a real one, ask her." So it's the whole idea of dying one's hair.

Q. If I use the term dumb blond joke, do you know what I'm referring to?

A. Yes.

Q. Could you give me a definition of what a dumb blond joke is?

A. That's a joke that makes reference to blonds as being dumb.

Q. Okay. Is this not playing upon those jokes?

A. No, this is playing upon the whole concept of the

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1 entire dye your hair arena. And the great number of -- And
2 I do not know this, but I suspect one of the number one
3 colorings that people dye their hair, and this is not
4 limited to females, is probably blond. And this is making
5 a tongue and cheek comment about there's something
6 artificial about that, and it's making the point that
7 Winston is 100 percent tobacco, no artificial ingredients,
8 no additives for true tobacco taste. And the important
9 point, I'll could just add --
10 A Sure.
11 Q -- is we're not interested, I'm not interested,
12 in doing advertising that's deemed tasteless to any adult
13 smoker. Therefore, before any ad runs, it goes through,
14 one, my judgment, the agency's judgment, the judgment of
15 the ad review panel, which is made up of employees of all
16 ages with various family sizes. It goes through the
17 judgment of my boss, the public relations department, the
18 external relations department, the legal department, and
19 all of those steps -- not to mention adult smokers in focus
20 groups. All those steps are opportunities where something
21 is unfairly picking on a group, and I would add that that
22 occasionally happens if it is too -- you know, if it's
23 picking on a group, then an ad won't make it. But in the
24 case of this one, I know you're drawing another
25 interpretation, but in the case of this one it was well

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1 received among all groups.

2 Q. Just so I'm clear here, you stated that you're

3 not interested doing ads that are overtly tasteless or

4 overly tasteless?

5 A. We're not interested in doing ads that offend

6 adult smokers or are found tasteless by adult smokers.

7 Q. Okay.

8 A. And what I was going into was the number of

9 places where this has been exposed, as are all of our ads,

10 in an effort to make sure we do not put out there anything

11 that's deemed tasteless by our adult smoker market. And

12 this one passed with flying colors.

13 Q. Well, are you interested in doing ads that

14 associate your product with sex?

15 A. No.

16 Q. Okay. Can you identify for me whether the model

17 depicted in the photo there is wearing any clothes?

18 A. No. Certainly bear shouldered, that's all I can

19 tell from that.

20 Q. Do you think she is sexually attractive?

21 A. I don't know her. It's hard to say.

22 Q. Do you think the reader would look at that ad and

23 believe that she's sexually attractive?

24 A. I don't know.

25 Q. Why don't we take it off the podium for a sec, or

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the stand, and I'm going to ask you now about the other ads that are listed there. Are there any ads that you believe associate cigarette smoking with sex of the other five ads that are within that magazine?

MR. BEACH: Objection to the form of the question on the grounds of lack of expertise and foundation.

Q. If you don't have any expertise on some of them, please tell me so.

A. The only one I have expertise on, and by that I mean what was it designed to say and how did adult smokers react to it, is the Winston ad. Commenting on others ads without any knowledge of why it was done, how is it perceived is -- I'm just speculating.

Q. Well, let's put the back cover ad up on the stand. Is that an advertisement produced by R.J.R. Reynolds Tobacco Company?

A. Yes.

Q. Okay. Now, you have no knowledge as to what the intent of this advertisement was?

A. I've read reports on the intent of it.

Q. Okay. What's your understanding from reading those reports of the intent of this advertisement?

A. That it's somewhat of a spoof.

Q. What type of spoof?

A. That's really all. I mean, I can't recall much

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more. That it's a light-hearted, humorous attempt at advertising. Really the person to ask about that would be Fran Creighton, who's in charge of Camel.

MR. BEACH: Who, in fact, he spent the last two days with.

MR. CASSIDY: And we have one more day of deposition for her.

Q. Well, the previous Winston ad you stated was a spoof on the concept of dying one's hair blond, correct?

A. (Nods head affirmatively)

MR. BEACH: Answer verbally.

A. I'm sorry. Yes, dying hair in general and dying it blond in specifics to that ad.

Q. Okay. And you said this is somewhat of a spoof. Do you have any understanding as to, again, what particular type of spoof this is referring to?

A. No.

Q. Okay. Have you ever heard any jokes about the so-called farmer's daughter?

A. Yes.

Q. Now, keeping that thought in mind, does that trigger any recall as to what type of spoof this ad is about?

A. Not really.

Q. Okay. Leaving aside your knowledge as an

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1 employee of R.J.R. Reynolds and just viewing this ad, you
2 know, as an adult here in America, do you think there's any
3 elements within this ad that associate cigarette smoking
4 with sex? And now I'm referring specifically to the act of
5 sexual intercourse.
6 MR. BEACH: You're asking for his personal
7 opinion divorced from his responsibilities with this
8 company and not as an expert in advertising, is that your
9 question, Mr. Cassidy?
10 MR. CASSIDY: I'm asking for which -- for the lay
11 opinion that the individual has. He has stated that he
12 has --
13 MR. BEACH: He doesn't come to this deposition
14 with a lay opinion. He comes to this deposition with an
15 extensive amount of knowledge with respect to Winston
16 advertising, a knowledge you apparently are unwilling to
17 probe whatsoever, and instead you want to ask him questions
18 about an ad that you just spent two days deposing the
19 person responsible for.
20 Q. I'll do this in two steps. Do you have a lay
21 opinion as to whether this ad associates cigarette smoking
22 with the act of sexual intercourse?
23 A. Well, unless I'm confused, I'm here in this
24 situation because I'm an employee of R.J. Reynolds and I'm
25 in charge of marketing for Winston, and I'm uncomfortable

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1 giving my personal view given the setting that this --
2 that's why I'm here. So no matter what I say, trying to
3 divorce it from my job, it can't be divorced.
4 Q. Okay. Well, let's try not to divorce it from
5 your job then. Do you have any opinion, and use whatever
6 factors you want to use, you know, your fourteen year
7 experience in the industry, et cetera, in evaluating --
8 A. Let me say this.
9 Q. Okay.
10 A. I can evaluate any ad from anything, but in order
11 to say it with any level of confidence or know what I'm
12 talking about, part of advertising development is what are
13 you trying to accomplish. What do adult smokers, in my
14 case, know about the brand, what do they think of the ad.
15 So I couldn't speculate on it without any basis of
16 knowledge. What I am prepared to talk about today and why
17 I was asked here is because I am very knowledgeable about
18 what goes on with the Winston advertising, and that's where
19 I feel comfortable giving you facts that I can back up.
20 And here I just would be off wandering on my own personal
21 opinion, and everybody has a personal opinion about
22 advertising, many of which are wrong because I'm not
23 informed on what that ad is trying to do or how it's
24 perceived.
25 Q. Okay. And I'm not asking you to tell me what was

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1 the intent of the art director people within the Camel
2 brand for creation of this ad. I'm just asking, based upon
3 your experience as a marketing person within the tobacco
4 industry, whether you can give me a reasonable estimate as
5 to whether this advertisement seeks to associate cigarette
6 smoking with the act of sexual intercourse?
7 MR. BEACH: Objection, asked and answered.
8 Q. Can you give me a reasonable estimate?
9 MR. BEACH: Same objection.
10 MR. CASSIDY: I'm trying to change the question
11 to reflect the concerns of the witness.
12 MR. BEACH: Same objection.
13 MR. CASSIDY: Okay.
14 A. I've already stated that as part of the
15 advertising code it speaks to the fact that you cannot show
16 smoking as -- what is the word it uses -- critical
17 attraction to the opposite sex, and I don't believe my
18 company does that, and I haven't done it on Winston. So
19 based on that knowledge, I don't think that's what they're
20 trying do. But I don't know. The best person to ask is
21 Fran Creighton, who's in charge of Camel.
22 Q. And again, I'm not asking for, so to speak,
23 knowledge, I'm asking for a reasonable estimate. Is it
24 possible to look at an ad and draw a reasonable conclusion
25 as to what was the intent of the people that created that

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ad? And divorce it from this ad right now.

A. No, it's unreasonable to look at an ad and in a vacuum have information about what were they trying to do, how do adult smokers interpret this. It's impossible to render an educated opinion, similar to what we did on the Winston ad. You asked a number of questions about how that might be interpreted. I, with confidence, could say this is how it was interpreted because I've seen that information first hand. That's where I feel comfortable talking about how my ads work.

Q. Okay. Well, have you ever heard of the term used in advertising, or the phrase, sex sells?

A. Yes, I have.

Q. Okay. Do you have any opinion as to whether that's an accurate statement or not?

A. No, I don't.

Q. What do you think is happening in this particular ad based upon the visual?

MR. BEACH: You're asking him to describe the visual?

MR. CASSIDY: I'm asking, yes, what is his impression of what's occurring here.

A. I can speculate, but again, the best person to answer that question is the person that developed the ad, which is Fran Creighton.

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1 Q. Let me phrase the question and you tell me if
2 it's unfair. The young man with his pants belt unbuckled
3 is fleeing from the house after the woman's father has
4 become upset upon learning that the man and the woman were
5 having sex. Is that -- Is that an unfair interpretation of
6 the advertisement?
7 MR. BEACH: Objection to the form of the question
8 on the grounds that Counsel is testifying, calls for
9 speculation.
10 Q. Is that -- Is that an unfair interpretation of
11 the advertisement?
12 MR. BEACH: The advertisement clearly speaks for
13 itself, Mr. Cassidy. Why are we engaging in this exercise?
14 MR. CASSIDY: I don't know if any advertisement
15 clearly speaks for itself.
16 MR. BEACH: In the eyes of each viewer it will.
17 But you're asking this witness to extrapolate beyond his
18 own interpretation to the interpretation of others, much
19 more importantly the interpretation of the people who
20 created it, which he has already testified he can't do.
21 These are unfair questions and improper questions, and you
22 have already had an opportunity to ask them of the person
23 who created this ad. So therefore, you're wasting the
24 witness' time and you're wasting my time.
25 Q. Is my interpretation unreasonable, Mr. Leary?

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A. For your interpretation to you, it's not unreasonable.

Q. Would my interpretation be unreasonable for the predominant readers to draw?

MR. BEACH: Objection, speculation.

A. I do not have an informed, educated opinion of the advertisement here because I was not involved in its creation nor how consumers interpret it. And given my position at Reynolds, speculating would be offering opinion that seems that I have some knowledge, and I think the best person to ask that question of is Fran Creighton, who developed that ad.

Q. Okay. All right. We'll talk to Ms. Creighton about it then.

MR. CASSIDY: Can we mark this as the next exhibit, please. And why don't you take that down

(Exhibit #21 marked for identification.)

MR. BEACH: Do you have a copy of this, Mr. Cassidy?

MR. CASSIDY: I thought I did, but I don't see one right in front of me. We'll make a copy. I'm just going to refer to one advertisement in the magazine, and I'm not going to ask the witness --

MR. BEACH: Is this the copy perhaps?

MR. CASSIDY: No, that's not the one I'm going to

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1 refer to. Can we show the magazine to the witness.

2 MR. BEACH: Can you identify the magazine for the

3 record please, Mr. Leary?

4 WITNESS: Interview, July 1998.

5 Q. Does -- Are you aware as to whether R.J.R.

6 Reynolds advertises its products in Interview magazine?

7 A. Yes.

8 Q. Okay. Why don't you look at the back cover ad.

9 Could we put that on the display? Do you have any

10 knowledge as to this advertisement or the product that's

11 being advertised?

12 A. I have seen that ad.

13 Q. And when you saw that ad, did you make any

14 connection in your mind between the product, Skyy Vodka,

15 and sexually provocative women?

16 A. I can make the connection that looking at it that

17 there's a man and woman there and there's Skyy Vodka in

18 that ad.

19 MR. BEACH: I'm going to object to the relevance

20 of any questions relating to Skyy Vodka and the -- for the

21 purposes of this deposition.

22 MR. CASSIDY: That's fine.

23 Q. But is there not something particularly about the

24 positioning of the woman and the man that makes you

25 associate the product with the act of sex?

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MR. BEACH: Objection.

A. Again, we're into interpret this ad. I don't have evidence of what this ad was trying to say or what it says. What I am able to do is talk in depth about the Winston advertising.

Q. Okay. Is it unfair for me to ask you to interpret an ad without having knowledge as to, so to speak, the art direction plan of that ad?

A. To effectively interpret the ad, it is necessary to know what the ad was intended to do, and -- speaking in my position, and know what it was -- how it was reacted to.

Q. Okay. But leaving aside the issue of effective interpretation, can you make a reasonable estimate as to what was the intent of the ad based upon seeing the final product? And not necessarily this ad, but just as a general concept.

MR. BEACH: Objection, asked and answered.

A. Can you repeat it?

Q. Is it possible for you, as a marketing executive, to make a reasonable estimate as to the intent of an ad simply upon viewing the ad itself, the finished product? And I'm not asking you to make an effective interpretation, but just a reasonable estimate.

A. I think it's possible for me to have an opinion. And in the case of all advertising, it's designed to

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1 attract the users of that product, in my case adult smokers
2 to that product. And that's about the only interpretation
3 that I can make is that it's designed to attract vodka
4 drinkers to Skyy Vodka with any -- without any other
5 information.
6 Q. Okay. You can't say by what means this ad is
7 attempting to attract vodka users to Skyy Vodka without
8 speculating?
9 A. Not with any serious base of knowledge, not with
10 any confidence.
11 Q. Okay. Thank you. Why don't we put this exhibit
12 down.
13 MR. CASSIDY: And let's mark this as the next
14 exhibit.
15 (Exhibit #22 marked for identification.)
16 MR. CASSIDY: I'll finish with this ad and then
17 we'll take a break.
18 MR. BEACH: Can you get me a copy of that last
19 exhibit?
20 MR. CASSIDY: Sure.
21 Q. Can you identify what has been handed to you
22 as -- Excuse me. Can you also identify the exhibit number?
23 A. 22.
24 Q. Can you identify what's been handed to you as
25 Exhibit #22?

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A. It's a copy of a Salem ad, it looks like.

Q. Okay. I have a black and white copy here which the -- is a little bit clearer in terms of reading the print. I'll hand that to you. And is Salem a product produced by R.J.R. Reynolds?

A. Yes.

Q. Can you put the color copy up on the stand, please. Okay. Thank you. What is the main copy of this ad at the top?

A. At the top of this there's several pieces of copy, one is "When's the last time you got lucky?" The other is the Surgeon General's warning which says "Smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy."

Q. Do you consider the Surgeon General's warning part of an ad's copy?

A. It's a prominent part of every ad.

Q. I thought it was a separate element from copy that you identified earlier?

A. Well, your question was what is the -- I forget exactly, but one of the most prominent things at the top of this ad is the Surgeon General's warning, but there's also a headline to the ad that's not part of the Surgeon General's warning.

Q. Okay. So maybe we're just a little -- Maybe I'm

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1 imprecise on the word copy. Looking at the headline as
2 you've identified, what's your understanding of the phrase
3 "When's the last time you got lucky?"
4 MR. BEACH: Object to the form of the question,
5 relevance, expertise.
6 Q. Do you have any understanding of the phrase
7 "When's the last time you got lucky?"
8 A. I think it can mean any number of things.
9 Q. And what would be the number of things that it
10 could mean, in your opinion?
11 A. Well, in the context of this ad, I'd have to read
12 on to find out what exactly they're referring to in terms
13 of lucky, and it looks like they had some sort of party for
14 adult smokers, and they're implying that if you weren't at
15 that party, you missed out I think is what it says.
16 Q. Okay. But if -- Isn't it true that when someone
17 looks at an ad, you want them to, when they first approach
18 the ad, read what's in the largest type?
19 A. It's possible to construct the ad such that the
20 largest or boldest type, it can be done with coloration,
21 whatever, is the most prominent thing. In order to assess
22 how this one works, you'd have to see it.
23 Q. So is this a general principle, at least with
24 respect to ads that use copy, you might have something
25 that's bold or headline to catch the viewer's attention,

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and then with the idea in mind that they will then read the rest of the copy in the ad?

A. The way each ad works is different. It can be done with shapes, in this case I think this is a green orb that's got the Salem logo on it. Any number of things can be the most dominant thing.

Q. Okay. But here I'm just using an example of a copy ad, or I'm just actually looking at the issue of copy itself. Would you not agree with me that sometimes, not all cases, but in some ads where you have copy put into a headline and then you have subsequent copy in the ad, you're trying to catch the viewer's attention with the copy of the headline itself with the hope that then they will read the remaining copy within the ad?

A. That can be a strategy that's used.

Q. Okay. So you want the reader to first look at the copy in the headline?

A. Sometimes. Sometimes you want them to look at the image. It just depends on how the ad is laid out. In the case of this one, what may be the most dominant thing is that big green orb. I don't know.

Q. Okay. But what does the phrase itself "When's the last time you got lucky?" mean to you, irrespective of this advertisement?

A. I don't know. With the explosion of lotteries

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1 and stuff, it could mean being lucky there. There's all
2 kinds of ways you could be lucky.
3 Q. Is there any other way that you could think of
4 how the phrase "When's the last time you got lucky?" might
5 be interpreted?
6 A. Well, there's ways to interpret almost every
7 expression. What you've put in front of me is a Salem ad,
8 and you're asking me what does "When's the last time you
9 got lucky?" mean. The answer to that question is right
10 here at the bottom of the ad, so that appears to me to be
11 the answer of that question. I can --
12 Q. Let's move the ad away from you and I'll take it
13 down off the stand. I'm just asking what does the phrase
14 or this question "When's the last time you got lucky?" mean
15 to you. And you have identified maybe it means winning the
16 lottery. Is there any other possibility that a reasonable
17 person could come up with for saying what that phrase
18 means?
19 A. If you give me some examples of what you think of
20 it to might mean, I can tell you whether I've heard it
21 being interpreted as that before or not.
22 Q. Well, how about this example, it might mean to a
23 person when's the last time they had sex; is that a
24 reasonable interpretation?
25 A. I guess if someone interpreted it that way, they

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could interpret it that way. I don't know whether it's reasonable or not. In the case of this it means you missed the party that Salem had. I guess that is one interpretation of it.

Q. Have you ever used the phrase in your life "When's the last time you got lucky?"

A. I don't know that I have.

Q. Has anyone ever asked you that question in your life?

A. I don't know that they have.

Q. Do certain words have different meanings based upon the age of the audience?

MR. BEACH: Can you give him an example, please?

Q. Let's take the word gay. If a 90 year old woman used the word gay, do you think she might be referring to the same meaning as a 17 year old boy?

A. It's possible.

Q. But there's also a possibility that it could be used differently, correct?

A. I think there is more than one interpretation of the word gay.

Q. Okay. Is it not true that the word gay can be used to mean happy?

A. I think that is an interpretation of it.

Q. And is it not true that the word gay can be used

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to refer to one's sexual orientation?

A. I've heard it used like that as well.

Q. Okay. Now, is it a reasonable possibility that if you asked a 21 year old when's the last time you got lucky, they might first think of when's -- they were being asked when's the last time they had sex and not when's the last time they won the state lottery?

MR. BEACH: Objection, calls for speculation.

Q. Is that a reasonable interpretation or not?

MR. BEACH: Objection, calls for speculation.

Q. That a younger person would interpret the phrase when's the last time you got lucky as referring to when's the last time they had sex?

MR. BEACH: Same objection.

A. I don't know.

Q. You have no opinion?

A. I don't. What I do is talk to smokers 21 years of age or older, and I can speak to you with confidence about the Winston ads. I can't speak to you about interpretation of various expressions among 17 year olds.

Q. Well -- Or among 21 years old?

A. I can speak to the interpretation of smokers 21 years of age or older on the ads that we've got running on Winston right now.

Q. Okay. Thank you.

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MR. CASSIDY: Why don't we take a break.

VIDEOGRAPHER: We're going off the record at 10:07 a.m.

(There was a break taken.)

VIDEOGRAPHER: We're back on the record at 10:25 a.m.

Q. Mr. Leary, do you understand that you're still under oath?

A. Yes.

MR. CASSIDY: If the court reporter could please mark this as the next exhibit.

(Exhibit #23 marked for identification.)

Q. Mr. Leary, can you identify what's been marked as Exhibit #23 from just the cover?

A. SF Weekly.

Q. And the date of the edition?

A. November 23rd. It doesn't have a year on it. I'm sorry. Number 23. I apologize. July 15th to 21st, 1998.

Q. Okay. Does R.J.R. Reynolds advertise Winston cigarettes in these -- in news weekly magazines such as this?

A. We are in magazines such as this, whether we're in this one, I don't know right offhand. But we are in this type of magazine.

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Q. Okay. What type of magazine is this actually?

A. These are weekly magazines that are generally -- they're a local magazine. They refer to topics of local interest, and they're generally printed on newspaper stock.

Q. Do you have any idea as to what percentage of Winston's advertising budget for print advertising is spent on, so to speak, national, forecolor, high glossy magazines, as opposed to these more print and newspaper type weeklies?

A. In general I would probably say under 5 percent of our budget is devoted to these, of our advertising budget.

Q. In the 1990s has more money been allocated over time to these magazines than was allocated, say, at the beginning of the 1990s?

MR. BEACH: Excuse me before you answer that. Are you talking about by -- Who is the subject?

MR. CASSIDY: For Winston advertising.

A. In the case of Winston, I can speak to the recent history. Two, three years ago we were not conducting a national advertising effort, that's two or three years ago, like we are today, given the launch of the Winston No Bull 100 percent tobacco, true taste campaign. So in the last couple years our use of these type of magazines, as well all other magazines that reach adult smokers, has gone up

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1 significantly.

2 Q. Okay. But at one time Winston cigarettes were

3 not advertised in this type of magazine, correct?

4 A. I suspect -- I mean, we've had several campaigns

5 over the years, and I suspect off and on you might have

6 found Winston advertising in these type of magazines. I

7 know with my experience on other brands like Camel, these

8 type of magazines have always been part of the advertising

9 mix.

10 Q. But you are, correct me if I'm wrong, the most

11 knowledgeable person at R.J.R. Reynolds with respect to

12 Winston advertising?

13 A. Now I am, yes.

14 Q. Okay. And what time period would you say that

15 you're the most knowledgeable person with R.J.R. Reynolds

16 on Winston advertising?

17 A. I would say since August of '93 to the present.

18 Q. Okay. During that approximate five-year time

19 period did Winston cigarettes become advertised in these

20 type of magazines?

21 A. I can't recall whether over that period we've

22 used these type of magazines on Winston. We may have. We

23 had an effort that we executed on Select, which is a line

24 extension of Winston that had a national advertising

25 campaign, and I can't recall whether we used these specific

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1 types of magazines. They have always been part of the
2 marketing mix in the case of various brands. But in the
3 case of Winston, the campaign that's going on now, it has
4 only been since we launched in August of 1997 that we would
5 have been using these magazines.
6 Q. Okay. So during that five-year period you can't
7 tell me that prior to the national launch in August of 1997
8 Winstons were actually advertised in this type of magazine?
9 MR. BEACH: Objection, misstates his testimony.
10 Q. Is that a fair statement or not?
11 A. We've had various advertising campaigns.
12 Specifically what I recall since August of '93 is we had a
13 national advertising campaign on Select, which was in all
14 of a wide variety of magazines to reach adult smokers. I
15 might also add that as part of Winston's marketing, we've
16 advertised racing throughout that duration, and some of
17 those magazine, for instance, NASCAR Winston Cup Scene is a
18 weekly like this, it's the same type stock and all that, so
19 we may have been in those.
20 Q. Okay. The stock might be similar, but this is a
21 particular type of weekly, correct?
22 A. It's locally based, yes.
23 Q. Okay. Do you have any memory of any locally
24 based -- of any Winston ads placed in any locally based
25 newspaper stock magazines prior to August of 1997?

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A. Well, as I have said, we had a campaign on Select, which is a part of Winston. It was a national advertising campaign that had a broad media plan. I don't recall specifically whether we were in here, but if you were to show me some data that says, Ned, you advertised Select in two or three of these issues of these magazines, that would not shock me that we had placed an ad in there. That's all I'm saying is there may have been a case we're in here. For the most part on base Winston, since our advertising ramped up significantly once we launched the Winston No Bull campaign, and that's when I suspect we've had our heaviest use of these type of magazines.

Q. But with that ramp up, with that greater advertising, was it not decided to select a new category of magazines to advertise Winston in, and that being specifically these local newspaper weeklies?

A. If we were to look at how Winston's advertising showed up in various vehicles before and after the launch of Winston No Bull, you would find that it is up in every category. For instance, we've executed national outdoor advertising across the country since we launched this, which I don't know how often we've done that before, but not very often. Every piece of the marketing mix from retail presence to the number of magazines we're in to the amount of outdoor, everything is up. But this area would

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be up significantly, as well as many other areas.

Q. But I'm asking not only is it up, but is it basically a new category for Winston advertising?

A. No.

Q. Okay. What's the key characteristic difference between this type of magazine and the ones I've shown you earlier, besides the quality of the paper that's used?

A. They speak primarily to issues of local interest.

Q. Are they directed at a particular target audience by age?

A. I do not know. I know that these magazines are screened and selected on the same basis I referred to earlier, which is editorial content, the majority of the readers have to be over 21 years of age, the other types of advertising in them. The primary difference is that they're of local interest.

Q. Okay. Aside from local interest, aside from newspaper print, is there any other primary difference between this type of magazine and the ones I've previously shown you today?

A. Some of these are free. I'm not sure all of them are free, but I know some of them are.

Q. Have you ever seen any data on the medium age of the readers of this type of free newspaper print local magazine?

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A. I may have.

Q. Do you have any recall, sitting here today, as to whether you ever have?

A. Not specifically, no.

Q. Have you ever asked anyone to give you a printout of the medium age of this category of magazines?

A. I don't know that I have specifically asked for it. I'm aware that we have information to confirm that the majority of readers of these magazine are over the age of 21, and that's conducted primarily in the media department.

Q. Well, how do you know that your -- That the media department has that information, specifically to these local weekly free newspapers?

A. Because they have told me they do.

Q. Okay. Why don't you open up this magazine to the page that I have paper clipped.

(Witness complied.)

Q. What did you find inside there?

A. I found something that looks like a napkin, and it says on one side "Your phone number here," and on the other side "Ok, your real phone number here, 100 percent tobacco. Straight up. Winston." And a Surgeon General's warning.

MR. CASSIDY: Could we please have that marked as a separate exhibit.

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(Exhibit #24 marked for identification.)

Q. And could we put that napkin on display, please.

(Witness complied.)

Q. Is this considered a form of advertising for Winston cigarettes?

A. Yes.

Q. Does that fall within any category of advertisements that you can think of?

A. It's obviously print advertising. This concept is actually a new one that we just started executing, and it's advertising on a napkin.

Q. Are you aware of the different, if there are more than one, local papers that you are using with this advertising?

A. We're using more than one.

Q. Are you using ones in California aside from the San Francisco Weekly?

A. I do not know. I know this was a discussion with this type of magazine for which ones would be willing to do it, which ones could physically do it, and not all could do it. Some could do it, some could not. I'm aware of that, and there are several that are doing it across the country.

Q. Okay. Including any in Massachusetts?

A. I don't know offhand.

Q. Do you have advertisements for Winston cigarettes

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in local weeklies in the Boston area?

A. I suspect we do, but I'm not exactly sure. I'm not sure what the alternative weekly up there is and --

Q. Do you have an understanding of what the top twenty cities in America are in terms of population?

A. I couldn't name them. I have an understanding that there are twenty cities that are the biggest.

Q. And why do you, as a marketing person, have an understanding as to what are the top twenty cities in America with respect to population?

A. I said I don't know what those cities are. I know there are cities that are bigger than others. As a marketer why would I be interested in what those cities are? Because there are more adult smokers over the age of 21 in those cities than in smaller cities.

Q. And as a percentage of the U.S. smoking population, is it not also relevant to know how many people are in the top twenty cities in America?

A. I'm not sure I understand that.

Q. Well, have you ever geared any marketing campaigns directed at the top twenty cities in America?

A. I don't recall any specifically directed. I would say this, that when we develop marketing programs and execute them, they're executed for their effectiveness and their efficiency at reaching adult smokers 21 years of age

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1 or older, and what you will often find, if you can find
2 those people, are those adult smokers in a concentrated
3 area, you will have greater efficiency and greater
4 effectiveness at delivering -- delivering your message.
5 For instance, a billboard in New York City on the Triboro
6 Bridge where I don't know how many people or adult smokers
7 go across that is more effective than one here -- and
8 efficient than one here in Winston-Salem that reaches
9 less -- fewer adult smokers. So in that regard there are
10 concentrations of retail stores in big cities, there are
11 concentrations oftentimes of billboards, and sometimes
12 there's concentrations of these type of magazines. For
13 instance, in New York I know there are several that do the
14 same type thing.
15 Q. But this particular type of advertisement, is
16 this only being used within major cities in America?
17 A. This type of advertisement is used across the
18 country in cities that offer this type of magazine.
19 Q. And are those the major cities in America?
20 A. Well, you'd have to define major. For instance,
21 it's in New York, it's also in Winston-Salem, North
22 Carolina. Not everybody would agree that Winston-Salem,
23 North Carolina is a major city, but we're in a magazine
24 like this.
25 Q. Is there something unique about Winston-Salem,

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1 North Carolina? As you look out the window here, is there
2 anything that draws your attention?
3 A. I'm not sure I follow where you're going.
4 Q. Well, where is R.J.R. Reynolds Tobacco Company
5 located?
6 A. Right there.
7 Q. In Winston-Salem, North Carolina?
8 A. Right. But if your implication is we're in this
9 magazine because Reynolds is here, we're in this magazine
10 because there is a concentration of population, as well as
11 adult smokers here, and I suspect you can find magazines
12 like this in towns smaller than Winston-Salem. We don't do
13 any marketing, or very little, simply because we're
14 headquartered here.
15 Q. Did you do any pretesting of the response of this
16 particular ad before it was introduced to these news
17 weeklies?
18 A. Absolutely.
19 Q. And what age group did you pretest?
20 A. 21 the 34 --
21 Q. And was there --
22 A. -- adult smokers.
23 Q. Was there a particular group within that 21 to 34
24 that were examined?
25 A. I don't know. This was -- I don't think so.

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1 This was a -- The way we're testing some of these type
2 things is we'll go to an adult nightclub that's 21 plus and
3 we'll ask smokers to take a look at some of these ads. And
4 in that group -- In fact, I think we were in Atlanta this
5 past week showing adult smokers some of our ads to get
6 feedback, and I think it's a pretty broad range of 21 to 34
7 year old adult smokers.
8 Q. Do you think this ad might appeal to someone at
9 the lower end range -- Or would it appeal to people at the
10 lower end range of 21 to 34 more than people at the higher
11 end range of 21 to 34?
12 A. I have no idea.
13 Q. Well, didn't your test results give you responses
14 based upon people's age within 21 to 34?
15 A. No, this was qualitative. We didn't -- Well, 21
16 to 34, we go into a 21 plus nightclub and ask adult smokers
17 what they think. I thought what you were asking me was did
18 I have any knowledge of how it did among the various ages.
19 Because this was qualitative, there's no tabulation or
20 quantification of the various age groups. It was just a
21 general consensus among the adult smokers we talked to.
22 Q. Okay. With respect to new Winston cigarettes in
23 general, not talking about this particular ad right now,
24 have you done any quantitative analysis within the 21 to 34
25 age group that has then been broken down specifically to

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the 21 to 24 year old age group?

A. I suspect we have broken the 21 to 34 group down, but our primary target for Winston is adult smokers 21 to 34.

Q. Okay. Are you specifically aware of analysis in which that 21 to 34 year old target group was broken down within that analysis to ages 21 to 24?

A. I think we have done that, yes.

Q. Okay. Did you get any feedback as to -- in the pretesting of this particular item here that's marked as Exhibit #24, as to whom this might appeal to by age?

A. No. I know that it was -- I was not a part of it, but I know it was shown to smokers in the 21 to 34 year old age group, and it was one of the most interesting and liked and clever things that we've ever shown them because of its uniqueness of the message and the way the message is delivered.

Q. What's so unique and clever about it? And maybe if we just open it up to both sides.

MR. BEACH: Well, there's text on three sides, Mr. Cassidy.

MR. CASSIDY: Okay. Well, I can only display it --

MR. BEACH: Why don't you --

MR. CASSIDY: Let's display it right now as this

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way, and we can turn it over to the other way in a second.

Q. Now, I'm going to turn it back to where most of the text is located. What's unique and clever about this ad?

A. Well, what adult smokers liked about it was, first off, they have never seen advertising quite like this done on napkins before. What's also unique about it is that the message that is on there is unique to the environment, or consistent with the environment where you may find a napkin, namely a bar environment. The message is consistent to something that goes on in bars among adult smokers is meeting people and getting -- meeting new people and finding out how to contact them via their phone number, and this is making a spoof on the concept of people giving you their phone number when it's really not their real phone number. And again, on the back it says "ok, your real phone number here. 100 percent tobacco. Straight up. Winston." Again, it's leveraging the No Bull attitude. And what this is doing is making fun of the concept of can I have your phone number? Yeah, here's my phone number, but it's not really my phone number. And I think that's what adult smokers 21 to 34 found amusing.

Q. Okay. But this was not placed into a bar environment in terms of what we're looking at right here, correct?

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A. That's how we tested it. But the concept itself looks like a bar napkin. I mean, that, to me, is what it looks like. It's not a kleenex or a paper towel.

Q. Yeah. I'm not doubting that, but I'm saying there's a difference between where you tested it and where you displayed it?

A. That's true, we tested it in the bars and this is a magazine.

Q. And this is a magazine that's free, correct?

A. Uh-huh. Yes, this one is.

Q. Is there any age restriction in obtaining this magazine that you're aware of?

A. Not that I'm aware of.

Q. Would you say as a general rule that teenagers have more or less disposable income than adults?

MR. BEACH: Objection, speculation.

Q. Is it too speculative for you to give an answer to the question I have just asked?

A. My own personal opinion would indicate that I have a lot more disposable income now than I did as a teenage.

Q. And is there a reason why?

A. I make -- I earn money now.

Q. A fair amount of money, correct?

A. It's a fair compensation program that's offered

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at Reynolds.

Q. Do you think you're in the top 10 percent of wage earners that live in the Winston-Salem area?

A. I don't know.

Q. Would you be surprised if you weren't?

A. I don't have any idea. We can go by and see where I live and find entire neighborhoods where people appear to make a whole lot more than I do. I have no idea where I stack up in the salary range of residents of Winston-Salem.

Q. But we wouldn't be able to compare a person's stock option portfolio by just looking at people's houses, would we?

MR. BEACH: Mr. Cassidy, you're outside of the area of proper questions. Why don't you go ahead and continue asking questions about this advertisement.

MR. CASSIDY: Your objection's noted.

Q. Going back to this advertisement, there's nothing that prevents teenagers from getting a copy of this napkin as R.J.R. Reynolds has distributed it in this particular product; is that correct?

A. That's correct.

Q. Okay. Was there anything --

A. Let me add to that, if you don't mind.

Q. Sure. No, you can -- it's your answers.

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A. There are legal restrictions though to people under the age of 18 acquiring the product that's advertised in that napkin, that's against the law to be sold, and in many states it's against the law for those teenagers to have that product.

Q. But are you also aware that, despite the law, substantial numbers of teenagers do obtain cigarettes sold by all tobacco companies, including R.J.R. Reynolds, on a daily basis across America?

A. If you are asking me am I aware that laws are broken across this country, yes, I am. And in the instance of cigarette -- the laws pertaining to the sale of cigarettes, I suspect those are broken, as are many other laws.

Q. Okay. Was there any reason why this napkin was placed within the particular portion of the magazine that you found it in? And maybe you might want to look at that portion of the magazine.

A. I suspect there was a reason it was placed within the romance section of one with people's phone numbers.

Q. And could you describe what is that romance section?

A. I think it's a way for people to contact people for dates.

MR. BEACH: Just for the purposes of the record,

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can I identify that this apparently is a reference to page 87 of this publication, which was marked Exhibit #23 of this deposition.

MR. CASSIDY: Thank you, Counsel.

Q. So was there an intent to have this particular advertisement inserted next to the romance section of this news weekly?

A. I do not know specifically that that direction was given, though it would not surprise me.

Q. Okay. And why would it not surprise you?

A. Because the message of that ad is consistent with what's going on in the magazine at this point. It's about phone numbers, and I might also point out that two of the phone numbers on here are with an age restriction of 18 plus.

Q. But there is no restriction as to whether a person has to be 21 and older, correct, that you can observe?

MR. BEACH: With respect to what?

Q. With respect to the age placement of the ads.

A. I'm not sure I'm following what you're asking. This is limited to -- In fact, you could point out that there's an ad in here to call a number, but unless you're 18 years of age or older, you can't do it. Similarly to that there's an ad for a cigarette here, unless you're 18

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1 years of age or older, you can't purchase it. So there's
2 an example of two ads with age restrictions on the use of
3 that product.
4 Q. But I think R.J.R. Reynolds was not seeking to
5 place ads that would attract persons under the age of 21.
6 MR. BEACH: Objection to form of the question,
7 Counsel is testifying.
8 A. We develop all of our marketing programs, as I
9 spoke to, this included to interest smokers over the age of
10 21. It is also a fact that the age established by the
11 state government and the federal government for what they
12 deem an appropriate age to purchase cigarettes is 18 years
13 of age or older.
14 Q. Is there any intent on the part of R.J.R.
15 Reynolds to associate new Winston cigarettes with the
16 dating experience by virtue of placing this particular
17 napkin and the message on the napkin in the romance section
18 of the news weekly?
19 A. No. Our intention with this, similar to every ad
20 that we've done on Winston, is to speak to a No Bull
21 proposition. In this case we are speaking to the
22 insincerity of sometimes people give their phone number,
23 it's not the real phone number, and you turn this over and
24 "ok, your real phone number here." It's speaking to that
25 dynamic as opposed to trying to associate ourselves with

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1 dating.

2 Q. I understand the concept of the No Bull dynamic,

3 but aren't you trying to apply the No Bull dynamic in lots

4 of different contexts?

5 A. Absolutely.

6 Q. And is one of those contexts, as evidenced by

7 this exhibit, the dating experience of young people?

8 MR. BEACH: Objection, Counsel's testifying,

9 asked and answered.

10 A. This is an example of relating the No Bull

11 experience to the concept of adult smokers in social

12 environments providing phone numbers to one another, and

13 perhaps at times providing a false phone number, and this

14 points that out and says "ok, your real phone number here."

15 And that's all it's designed to do. And then it's signed

16 off with "100 percent tobacco. Straight up. Winston," and

17 a Surgeon General's warning.

18 Q. But wouldn't you agree with me that in this

19 context in terms of providing phone numbers with another

20 adult, it applies to the dating experience?

21 MR. BEACH: Asked and answered.

22 MR. CASSIDY: I'm just trying to get specifics.

23 MR. BEACH: Asked and answered.

24 A. If the question is does this have anything to do

25 with adults in social situations among the members of the

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1 opposite sex? Yes.

2 Q. Thank you.

3 MR. CASSIDY: Let's mark this as the next

4 exhibit.

5 (Exhibit #25 marked for identification.)

6 MR. CASSIDY: I don't have a copy for you.

7 Q. Could please identify what has been marked as

8 Exhibit #25?

9 A. Richard Petty's Stock Car, Anatomy of a Pit Stop,

10 The 19-Second Ballet.

11 Q. What's the date of this magazine?

12 A. August 1998.

13 Q. Okay. Do you have any information as to what

14 might be the medium age of the readership of this magazine?

15 A. No.

16 Q. Okay. Is there an ad for Winston cigarettes in

17 this magazine?

18 A. Yes.

19 Q. Okay. Have you had a chance to review it? Is

20 there a specific connection in which the No Bull

21 advertising dynamic is being applied in this advertisement?

22 A. Racing.

23 Q. Okay. How important is auto racing to the market

24 of Winston cigarettes?

25 A. It represents a fairly large part of our

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1 marketing effort.

2 Q. What is the Winston Cup?

3 A. The Winston Cup specifically is the trophy that

4 is given to the winner of the NASCAR Winston Cup season.

5 Q. And is it named after someone named Winston, or

6 is it named after a Winston cigarette brand?

7 A. It's named after the Winston cigarette brand, and

8 it has been for the twenty-eight years we've been involved

9 with it.

10 Q. So is Winston the sponsor of NASCAR racing, or a

11 sponsor?

12 A. We are the series sponsor for NASCAR Winston Cup

13 series racing.

14 Q. How much money does R.J.R. Reynolds spend on

15 sponsoring Winston NASCAR racing? And if you can give me

16 the 1998 budget, if possible, or if you know the '97

17 expenditure.

18 A. Well I'm trying to remember what I -- I'm trying

19 to remember what I told you yesterday. Do you happen to

20 have those figures so I can be consistent? I broke the

21 budget down in motor sports, and I can't remember what I

22 said.

23 Q. To be fair to you, I don't know if I'll be able

24 to spot it for you.

25 A. Well, we're involved in several different racing

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1 series, and I think the figure was probably somewhere
2 between, I don't know, $60 to $70 million in total.
3 Q. Okay. I have here $60 million on Winston motor
4 sports.
5 A. Okay.
6 Q. Okay. And when we leave out the discounting
7 aspect of the marketing, that takes us down to I believe
8 $185 million, so is that approximately one-third of your
9 marketing budget, Winston motor sports related?
10 A. A little less than one-third, but probably more
11 like - something like that, between a-quarter and a-third.
12 I mean, that's all of mother sports, by the way. We're
13 involved in a lot of different things.
14 Q. Sure. Okay.
15 MR. CASSIDY: Why don't we mark this as the next
16 exhibit.
17 (Exhibit #26 marked for identification.)
18 Q. Mr. Leary, can you be please identify what's been
19 marked as Exhibit #26?
20 A. This is a ballot for our Winston No Bull 5
21 sweepstakes and motor sports program.
22 Q. And what's a ballot in this context?
23 A. It's a means to enter the sweepstakes.
24 Q. Is this a form of promotion for Winston
25 cigarettes?

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A. Yes.

Q. Okay. And what's the purpose behind this, if there is one?

A. The purpose behind this is to heighten the interest in Winston Cup series, and to heighten the interest among adult smokers in Winston, and provide adult smokers who are race fans an exciting way to be involved in racing.

Q. And is one way that you attempt to heighten the interest in racing and in Winston is by providing information that the consumer might want, such as the NASCAR Winston Cup 1998 schedule?

A. Yes, that helps identify where the sweepstakes is going to take place, as well as the races where five drivers will be racing for an extra million dollar bonus.

Q. Okay. Is there any age restriction on persons obtaining this particular promotional item?

A. This ballot?

Q. The whole exhibit.

A. This thing?

Q. Yeah.

A. No, there's not a restriction on obtaining the ballot. There's a restriction as -- in to how to enter, point one, is to be eligible you must fill out the form completely and be a smoker 21 years of age or older. And

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on the form itself it speaks to you must sign something that says "I certify that I'm a smoker; that I am 21 years of age or older; and that I want to receive offers, premiums, coupons, or free cigarettes. I understand that giving false information or to --"

WITNESS: I can hand you this and you can type it. I'm sorry.

A. "I understand that giving false information in order to accept these offers may constitute a violation of law."

Q. But the exhibit itself is not restricted in its distribution by age, is it?

A. No.

Q. Okay. Have you attended any NASCAR stock races that are listed here on this 1998 schedule in previous years?

A. Yes.

Q. From your observation at those events and -- have you noticed if there's a large number of teenagers and kids that attend these races?

A. There aren't.

Q. Do you receive any information on the -- or have you ever received any information on the age breakdown of the spectators at NASCAR Winston Cup events?

A. Yes.

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Q. And what's your understanding as to the age breakdown?

A. I can't recall it, but a small minority -- the numbers exactly, but a small minority are under the age of 18 or 21. And the reason for that is these are very expensive. The average price of these tickets is probably $75.00, but it's very small.

Q. There is not a different price for persons under a certain age to attend these events?

A. Not to my knowledge.

Q. Has Winston ever referred to the grand stands of NASCAR events as, quote, one big smoking section, unquote?

A. Yes.

Q. And what was that designed to mean?

A. Well, it's a play on words. One is the entire event is smoking because the smoke is part of stock car racing, when they start parti -- and I think we've used that in drag racing as well. There's a lot of tire smoke. The other thing it refers to is the fact that you can smoke at a NASCAR Winston Cup event.

Q. Well, is cigarette smoke part of drag or motor racing?

A. No.

Q. Why would that be?

A. It's no more a part of any outdoor sporting

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event.

Q. I don't have a copy of this presently with me, but are you familiar with the advertisement for Winston cigarettes that features several of the leading NASCAR drivers?

A. We have an ad that features the next participants in the NASCAR Winston Cup series that are participating for the No Bull 5 Bonus at Indianapolis.

Q. Okay. Can you describe that ad to me?

A. We've run more than one. The one that's most recently running says see five grown men fight over a purse. The Winston No Bull 5 $1 million purse at Indy.

Q. And who are the five men depicted in that advertisement? If you don't know the names, that's okay.

A. No, I know them.

Q. Okay.

A. It's -- Now that I say it, I'm not going to remember them all. Jeff Gordon, Mark Martin, Dale Jarrett, Rusty Wallace, and Bobbie LaBonte I believe.

Q. And are those some of the top NASCAR racers in America?

A. Some of them -- They are some of the top NASCAR Winston Cup drivers, yes.

Q. And could you describe the ad to me and what is its visual appearance?

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A. It's just a picture of them standing there looking at the camera with the headline see five grown men fight over a purse. The Winston No Bull 5 $1 million bonus at Indianapolis.

Q. Well, five grown men wearing racing uniforms, correct?

A. Uh-huh.

Q. What magazine is that advertisement placed?

A. Primarily racing.

Q. But could one also find it in general sports magazines?

A. I don't know whether we ran that ad in general sports magazines or not. If we did, it was in a very limited way. Predominantly they are in magazines such as NASCAR Winston Cup Scene, which is sort of a trade publication. But they have run in general magazines such as Sports Illustrated.

Q. Okay. And Sports Illustrated is distributed nationally?

A. Uh-huh. Yes.

Q. So would you have any reason to doubt that that -- not maybe any particular ad within the series, but an ad from the series has been distributed in Sports Illustrated?

A. It has at one time. Whether the one we just

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1 talked about is in there, I don't know.

2 Q. I'm not asking for the one we just talked about,

3 but I'm just asking for that series.

4 A. We have run ads about the No Bull 5 in Sports

5 Illustrated.

6 Q. Okay. Have you ever had any occasion to visit a

7 friend that had a teenage son?

8 A. Yes.

9 Q. Okay. Have you ever seen that son or sons

10 bedroom?

11 A. I may have.

12 Q. Okay. Do you have any memory as to whether that

13 son or sons had on display in his bedroom pictures from

14 Sports Illustrated on, say, a bulletin board?

15 A. May have.

16 Q. Okay. Do you think there's any possibility that

17 the advertisement that you have of the five NASCAR stock

18 racers is ever taken out of Sports Illustrated by teenagers

19 and placed up on a bulletin board because teenagers are

20 attracted to NASCAR sports racing?

21 MR. BEACH: Objection to the form of the question

22 on two grounds, first of all, it calls for speculation,

23 second of all, Counsel is testifying. Subject to those

24 objections, you can answer the question if you know.

25 A. I don't know.

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Q. Did you read Sports Illustrated when you were young?

A. I don't think I really started reading Sports Illustrated until I was in my twenties. I don't recall reading a lot of magazines when I was young.

Q. Well, in your twenties, was that when you were in college?

A. And up, uh-huh.

Q. Did you ever observe when you were in college that people might have pulled some article or advertisement out of a magazine and put it on display in their college dorm room?

A. That may have happened. I don't recall. That was over twenty years ago.

Q. Okay. Does the Winston advertisement for five NASCAR stock racers function not only as an advertisement for Winston cigarettes, but also as an advertisement for NASCAR stock racing?

A. The ad that we discussed is primarily an ad about the Winston No Bull 5. If we had that ad in front of us, you'd see there's not a pack of cigarettes in that ad. It's about the Winston No Bull 5 primarily. The second thing I would say that it is, it's an advertisement for NASCAR Winston Cup racing. And in my estimation, thirdly, it's an advertisement about Winston's involvement in motor

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sports.

Q. Okay. Now, looking at its primary involvement, wouldn't it -- wouldn't it also -- given what you have identified as the ad's primary purposes, would it surprise you that teenagers across America who are interested in NASCAR stock racing might not rip that out of the ad and put it up on display or show interest in it?

MR. BEACH: Objection, calls for speculation.

Q. Is that far too speculative of a concept?

A. Well, I think it is. You have asked me what is the attendance of NASCAR Winston Cup races. It is overwhelmingly adult. I think primarily because of the cost of the tickets. Are there -- Is there interest in NASCAR Winston Cup racing below the age of 21 or 18? Yes. I would simply go on to say their interaction with Winston cigarettes at the event is extremely closely monitored. They have to show ID to get anywhere near cigarettes in the -- with a security guard there. Yes, people under the age could be exposed to that advertisement. It is possible that some might like it so much as to take it out. I don't really have any idea. But what I do know is that it's against the law for people under the age of 18 to go purchase Winston if they were so interested from that ad, which I don't think that's -- As I mentioned, Winston cigarettes are not even in that ad. What's in that ad is

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1 the No Bull 5, which is a race where five drivers compete
2 for $1 million at five different tracks.
3 Q. But aren't you using that ad to, so to speak,
4 leverage the awareness of Winston cigarettes based upon the
5 popularity of NASCAR racing?
6 A. The main reason that -- Well, we've been in
7 Winston Cup racing, NASCAR Winston Cup racing, for over
8 twenty seven years because we think it's a consistent fit
9 with Winston. And in particular with the No Bull
10 positioning, which is why the event is called the No Bull 5
11 where five drivers battle it out for $1 million. But
12 clearly I think there's benefit to Winston by being
13 involved in NASCAR Winston Cup racing or I wouldn't be
14 investing in it.
15 Q. And in fact, I mean, isn't it one of the best
16 marketing things you have going for the brand?
17 A. It's one of the good -- Yes, it's one of many
18 good marketing programs we have. The advertising campaign
19 is important. The promotion program is important. Our
20 association with motor sports is important. It's all
21 important.
22 Q. Well, compared to Philip Morris, doesn't it also
23 truly distinguish R.J.R. Reynolds?
24 A. I think Winston has one of the most authentic,
25 long-lasting and No Bull associations with racing of any

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1 sponsor in racing.

2 Q. Do you think teenagers are interested in NASCAR

3 racing whether or not they attend a substantial percentage

4 of the events themselves?

5 A. I don't have any information on teenagers

6 interest in NASCAR Winston Cup racing.

7 Q. Is Winston NASCAR racing shown on national

8 television?

9 A. Sometimes.

10 Q. Have you ever studied the demographics of the

11 viewers of programs showing Winston NASCAR stock racing?

12 A. No.

13 Q. You have no knowledge as to the age breakdown of

14 the events' popularity on television?

15 A. No, none.

16 Q. Okay. We can put this down.

17 MR. CASSIDY: Would you want to take a five

18 minute break before our lunch break, or do you want to keep

19 on going right to noon?

20 WITNESS: I'd like to take a break.

21 MR. CASSIDY: Okay.

22 VIDEOGRAPHER: We're going off the record at

23 11:12 a.m. This is the end of tape number five.

24 (There was a break taken.)

25 VIDEOGRAPHER: We're back on the record at 11:23

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a.m. This is the beginning of tape number six.

Q. Mr. Leary, do you understand that you're still under oath?

A. Yes.

Q. I'm going to ask you -- I'm going to give you a couple terms and ask you if you're aware of what they mean. The first one is marlin.

A. Yes.

Q. What is marlin?

A. It's a system we use to measure share of market.

Q. And could you describe the degree of precision that marlin documents the share of market?

A. I don't know the range of error around marlin.

Q. Does it give you information on a weekly basis as to cigarette sales in America?

A. No.

Q. On a monthly basis?

A. Yes.

Q. Do you believe it's the most comprehensive way to measure cigarette sales in America?

A. I don't know its accuracy or comprehensiveness versus other research tools to measure share of market. I know that it's what we use, and I believe it to be fairly -- fairly accurate.

Q. Well, does it cost R.J.R. Reynolds money to use

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this system?

A. Yes.

Q. Okay. And would R.J.R. Reynolds have chosen a different system if it believed that a different system gave it more accurate information?

A. It probably depends on the cost straight off. As with any research, you can reach a point where increased accuracy is not worth the extra expenditure.

Q. Well, in this particular context, are you aware of any data collection -- or data system that's sold that's more accurate than marlin?

A. I have no knowledge of that.

Q. Is there anything unique about marlin as opposed to other services that are available that track cigarette purchasing?

A. I don't know.

Q. Is marlin specifically adept at tracking cigarette sales in, so to speak, mom and pop convenience stores that other research services do not do as good a job with?

A. I don't know.

Q. Have you ever heard any reference to that?

A. To?

Q. Marlin being specifically adept at tracking cigarette sales in convenience stores.

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A. I've heard -- I've heard discussions in the past about whether or not systems we were using were accurately capturing cigarette volume as it moved through different outlets because many categories are more developed in some outlets than others. For instance, I think soft drinks are very developed in convenience stores, as are cigarettes. And I can't really recall whether one of marlin's benefits was it more accurately captured cigarette volume, but it may well have been -- it may well do that.

Q. Do you have any information from whatever source, popular press I'm including, as to the predominant location at which teenagers are purchasing cigarettes in America?

A. No.

Q. Do you have any understanding as to the definition of the word safari?

A. No. I know the word safari.

Q. As used in cigarette marketing research?

A. No.

Q. Okay. What was or is Winston ST, or Project Winston ST?

A. That may have been -- Gosh, I can't recall. You will have to refresh my memory. We've had a lot of projects with names. I can't recall what Winston ST was.

Q. Well, was there a project made for the No Bull campaign before it became known as the No Bull campaign?

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A. Yes.

Q. What was that name?

A. MM.

Q. And thinking of that now, does that Winston ST spring to mind?

A. Yes, I have heard Winston ST. I just can't recall the exact project that it was. You might can refresh -- I'm sure it's on many -- it's on many documents, I just can't remember which one it was.

Q. I'm just trying to get an understanding as to the nature of different project names with respect to the No Bull campaign. Was there any relationship between project Winston ST and the No Bull campaign, if you --

A. I can't recall. This project was called project MM from almost the beginning of when I had it. ST clearly rings a bell with me, but I can't recall exactly what it was.

Q. Okay. And you don't know the relationship, at least right now without me showing you a document, between project MM and project Winston ST?

A. Not really, but it does ring a clear bell. I just can't remember which one it was.

Q. Okay. Does R.J.R. Reynolds still use the term young adult smoker or YAS?

A. We use the term younger adult smoker.

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Q. Okay. What were the primary objectives, if any, for new Winston cigarettes?

A. The No Bull?

Q. Yeah. And I'm going to refer to No Bull as new Winston if that's okay.

A. That's fine. The primary objective was to improve Winston's performance after almost twenty years of decline. And the way we set about doing that was we needed to reposition this brand and establish an image relevant to adult smokers. And parts of that strategy was also to build in a product point of difference that did two things: One, it interested adult smokers of competitive brands in retrying Winston; and secondly, and equally as importantly, it was -- the product point of difference was designed to provide credibility for the No Bull attitude. And as I have discussed several times, the way this operates is we have a positioning called No Bull, and the advertising and all the marketing was designed to build an attitude of true to one's self, what you see is what you get, reject artificiality, and that was backed up by a product very similarly that was 100 percent tobacco, no additives for true tobacco taste. So both parts of the marketing proposition could be characterized as No Bull.

Q. Is the marketing proposition and the project formula co-extensive with respect to new Winston

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cigarettes?

A. What do you mean by the project formula?

Q. I'm sorry. The product formula.

A. Co-existent meaning?

Q. Do they overlap?

A. Yes.

Q. Okay. I'm going to hand you what was marked as Exhibit #18 in Ms. Creighton's deposition from two days ago. Can you identify what is Exhibit #18?

A. It's a pack of Marlboro cigarettes in a -- filter cigarettes in a flip top box.

Q. Were new Winston cigarettes designed in part to attract Marlboro smokers to switch to Winston cigarettes as these Marlboro smokers entered their early twenties?

A. The Winston proposition was designed to attract adult smokers of various -- of any competitive brand, but given the interaction between Winston and Marlboro and the size of Marlboro, yes, one of our objectives was to attract adult smokers of Marlboro.

Q. Is R.J.R. Reynolds at war with Philip Morris, and the battle ground's being fought between Marlboro and Winston?

A. It's a very competitive marketplace. Our primary competitor, given their girth, is Philip Morris, and particularly Marlboro. Is at war? I don't know that I'd

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use that word. I'd say that it's a very competitive marketplace, and ever since I have been at Reynolds, one of our primary competitors, and a desire to take business from the adult smokers of that brand has been Marlboro.

Q. But was there a particular group of adult smokers that you wanted to get that were smoking Marlboro with the new Winston campaign? And by particular group I'm referring to age group.

A. Well, speaking of -- just to talk a little bit about Winston, and what we were trying to do, Winston used to be the number one selling brand in this country, and it was up to I think 17 or 18 share points, it's now down to 5.5 or 6 share points. As a result of being that large at one point and time, its business face is very broad, across a wide spectrum. It has a perception of being a bigger brand than it actually is, but it is still viewed as a very big brand among adult smokers. As a result of that, as we moved forward with this project, our desire was to rebuild this brand as a big, broad-based brand, so our target for this was very broad. And the main group of adult smokers we use as a target for this is 21 to 34, which represents a big chunk of Marlboro's business.

Q. Okay. But within that broad group, are you also seeking to appeal to one segment of that group, and that segment as being Marlboro smokers in their early twenties

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who might be considering switching to another brand, and you're trying to position Winston as that brand?

A. I'm interested in every group of adult smokers that doesn't smoke Winston, and that would include 21 to 34 and 21 to 24 year old adult smokers.

Q. Have you ever heard the concept transition brand?

A. I may have heard that.

Q. And what does that mean?

A. I'm not sure.

Q. Well, can you give a reasonable estimate?

A. A transition brand?

Q. Yeah.

A. I guess it could potentially mean you move from one brand to another brand to another brand, and that brand in the middle is the transition brand.

Q. And are you trying make Winston the transition brand for Marlboro smokers when they enter their early twenties, amongst your other objectives?

A. I'm trying to convince adult smokers of Marlboro not to just transition to Winston but switch to Winston full time.

Q. Sure. But first they have to switch, correct, to get them away from Marlboro?

A. Well, the way the process would work would be an adult smoker perhaps would hear of the Winston No Bull

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1 proposition, they'd have an opportunity to try the product,
2 and over the course of time hopefully they would switch to
3 the product.
4 Q. Okay. Was the product formula of new Winstons
5 redesigned to improve the cigarette's taste in addition to
6 removing all additives?
7 A. We certainly wanted to improve the perception of
8 the taste of Winston among adult smokers.
9 Q. Is the answer to my question yes?
10 MR. BEACH: He answered your question, Counselor.
11 MR. CASSIDY: No, he did not answer my question.
12 My question was with respect to the product formula, and
13 the answer was with respect to the perception.
14 MR. BEACH: Why don't you try to rephrase your
15 question, perhaps --
16 MR. CASSIDY: I will repeat the question.
17 Q. Was the product formula of new Winston cigarettes
18 redesigned to improve the cigarette's taste in addition to
19 removing all additives?
20 A. Yes.
21 Q. Okay. In what ways was the product formula
22 redesigned to improve taste?
23 A. Well, when you talk about taste, taste is a
24 subjective thing and there are many components that go into
25 an adult smoker's perception of a cigarette's taste. One

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1 of the components to taste is what your perception is of
2 that product or the adult smoker perception of that product
3 going into the taste trial. In the case of Winston, the
4 challenge was, number one, can we make a cigarette with no
5 additives, 100 percent tobacco, because that had not been
6 done on a widespread commercial basis before, so that was a
7 challenge to do. The second thing is what are the
8 perceptions of the taste of this product going to be once
9 both current Winston smokers, because Winston was a big
10 brand when we attempted this, as well as adult competitive
11 smokers going to be once I say here's a new Winston, it's
12 made from 100 percent tobacco, no additives, for true
13 tobacco taste. So one hurdle was can you do it. The
14 second hurdle was what do adult smokers think of it. And
15 what we hope to come out at the end of that whole, to go
16 back to your question, is that Winston smokers would say I
17 like this as good as or better, and adult competitive
18 smokers would say I like it better.
19 Q. Again, I'm focusing on the product formula
20 itself. Are you aware as to what was done to the product
21 formula to improve taste, besides removing all additives?
22 A. Well, the challenge in this instance was not take
23 your existing product and improve the taste of it. There
24 was another hurdle in there. Take this existing product,
25 remove every bit of additives, flavorants that go into it,

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1 and make the product as acceptable to the current Winston
2 smoker and more acceptable to adult competitive smokers.
3 So this project -- there was another big objective of this
4 that wasn't I've got Winston, I have an idea, let's improve
5 the taste. There was another component to No Bull, which
6 was make a Winston cigarette with no additives, 100 percent
7 tobacco. So that really was the, I would say, one of the
8 bigger hurdles.
9 Q. Okay. Was --
10 A. Do you see what I'm saying?
11 Q. Yes. Was the taste of new Winstons modified, in
12 part, to deliver a less strong or harsh tasting cigarette?
13 A. One of the desired outcomes was that adult
14 smokers would think that Winston is less harsh than it was
15 before, yes.
16 Q. And how did you achieve this, if you did, without
17 additives?
18 A. Well, the blend is a huge component of the
19 product. I mean there was extensive blend work done.
20 First, to be able to make a good tasting cigarette with no
21 additives, and secondly, to see how good we can make it
22 without the use of additives and flavorants that alter the
23 taste. So there was extensive blend work done. And there
24 was work done on the total configuration of the product. I
25 mean, I don't know the ins and outs of the everything we

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1 did, but there are ways to build cigarettes that have to do
2 with air dilution, the amount of filtration, the length of
3 the cigarette, the amount of tobacco in the cigarette. I
4 mean, there's a variety of components that go into building
5 a cigarette.
6 Q. Including the cigarette paper used?
7 A. Yes.
8 Q. Including the design of the filter?
9 A. Yes.
10 Q. Are you aware of what additives were removed from
11 the new Winston cigarettes?
12 A. Some of them.
13 Q. Can you give me a list of that?
14 A. Cocoa, sugar, licorice, propylene glycol,
15 glycerine.
16 Q. Why were those additives present in old Winston
17 cigarettes?
18 A. Over the course of time cigarette manufacturers
19 have used a variety of flavorants to alter the taste of the
20 cigarettes and try and distinguish the taste of one
21 cigarette from another.
22 Q. Well, how did you achieve a less strong, harsh
23 tasting cigarette without using all the additives that were
24 previously used in the Winston cigarettes?
25 A. Well, there's two components to this. First,

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1 what were the tools available to alter the taste of the
2 cigarette. We've been through several of them, but the
3 blend is obviously a very key component, and I believe
4 there were significant blend adjustments made in order to
5 build a good cigarette. The second part to this, which
6 can't be underestimated, is this was the first leading
7 brand made from 100 percent tobacco, no additives, for a
8 true tobacco taste, so part of the marketing in this set
9 the stage for the taste expectations at the -- among adult
10 smokers.
11 Q. And what specifically were the blend adjustments
12 made to new Winston cigarettes?
13 A. Well, I'm not going to be able to give you the
14 exact what happened. I can tell you there's burley tobacco
15 in a cigarette, there's flue-cured tobacco in a cigarette,
16 there's reconstituted tobacco in a cigarette, and there's
17 Turkish tobacco in a cigarette. And all four of those
18 components, three of those are tobacco types, but one is a
19 processed type of tobacco, which is the reconstituted,
20 they're altered in various ways, you know, percentages to
21 produce a different tasting cigarette.
22 Q. Okay. Who would be most knowledgeable with
23 respect to the tobacco blend in new Winston cigarettes?
24 A. Denny Potter.
25 Q. Are all three blend components, if that's a fair

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1 word, burley, flue-cured, reconstituted, and Turkish
2 tobacco found in new Winston cigarettes sold presently in
3 America?
4 A. Yes.
5 Q. Do you know by percentage terms --
6 A. No.
7 MR. BEACH: Let him finish his question.
8 WITNESS: I'm sorry.
9 MR. BEACH: It just makes it hard for help her.
10 Q. Was Denny Potter the top R and D person at R.J.R.
11 Reynolds on this project?
12 A. Similar to my role in brand, yes.
13 Q. Okay. Were there other executive R and D
14 personnel on the project that come to mind?
15 A. Well, I think that the head of R and D at that
16 point was Gary Burger.
17 Q. Okay. What about Mr. Townsend?
18 A. I don't believe he was involved intimately in
19 this. I think Denny had a boss as well, or still does,
20 Skip Tinsley.
21 Q. What about James Swagger?
22 A. I've never heard of him.
23 Q. Is ammonia present in new Winston cigarettes?
24 A. Ammonia is not used in the production of new
25 Winston cigarettes.

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Q. Is ammonia still found though in new Winston cigarettes?

A. I don't know whether that may be a naturally occurring thing that's in there. I can tell you that the process used to produce Winston does not make any use of ammonia. There are two things used to make Winston, water and CO2. The water is found at levels lower than before the processing began at its completion, and CO2 is gone completely by the end of the process. So ammonia is not used in the production of new Winston cigarettes.

Q. Is ammoniated reconstituted sheet tobacco used in new Winston cigarettes?

A. No.

Q. Is any ammonia removed from the tobacco used for new Winston cigarettes and then added later back into the product?

A. You're asking a couple questions which I don't know whether ammonia is even present in tobacco in it's natural state. I can tell you it is not used at all in the processing, so if there is any other components in there, they are there because they are naturally occurring in tobacco, not because we use them. In fact, the whole manufacturing way we make cigarettes was altered to make sure that the facts I gave you, water and CO2 are only things that are used. In fact, as part of our

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reconstituted process I believe scrap tobacco is used, and when we started making Winston, we had to segregate all scrap from all other brands, though it was going in at a minimal rate, so that there was no chance that any tobacco that had been treated with any sort of flavorants was found in the finished product of Winston.

Q. What is scrap tobacco?

A. Small pieces that result from the manufacturing process.

Q. Small pieces?

A. Of tobacco.

Q. Tobacco leaf, or the tobacco plant itself?

A. The tobacco leaf comes from the tobacco plant, and when we get it, it's a tobacco leaf.

Q. What about stems, are those found in reconstituted tobacco within Winston cigarettes?

A. I don't know whether the stems are in the reconstituted sheet, but stems are in Winston.

Q. What's the difference between scrap and stems?

A. Well, scrap results from the manufacturing process. If you can imagine, it starts with a leaf, and that is chopped up into pieces, and then chopped up again in order to put it in a cigarette. Throughout that process you create scrap because the tobacco is relatively dry and it gets cut in small pieces.

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Q. Is it like a dust?

A. It can vary in size. Some of it probably is dust, but a lot of it literally is pieces of tobacco.

Q. And what about stem then?

A. Stem is a natural component to the tobacco leaf, and it's processed when the leaf is processed. And I'm not sure how we use stems, but they're a natural component of the tobacco leaf.

Q. Are you aware as to whether, with respect to any particular types of tobacco, the nicotine level in stems is different than the nicotine level found within the leaf?

A. No.

Q. Are there any artificial ingredients found in new Winston cigarettes?

A. No.

Q. Are there any artificial ingredients found within the cigarette paper used in new Winston cigarettes?

A. Well, the cigarette paper and the filter are both manufactured products, unlike the tobacco, which is a grown crop. Paper and filter are manmade things that are manufactured and have to have additives in them or you could not manufacture them. There is no such thing as a filter tree or a paper plant. So those components are manufactured and there are additives in them in order to make them. In the context of Winston, when we refer to 100

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1 percent tobacco, no additives, true taste, we're talking
2 about the tobacco.
3 Q. Has that always been the case that you have
4 informed the customer that you were talking about tobacco
5 when you've said 100 percent tobacco in your advertisements
6 for new Winston cigarettes?
7 A. If I'm not mistaken, 100 percent tobacco and no
8 additives have been a part of this campaign since its
9 inception at varying levels. I'd have to look back on the
10 initial ads, but --
11 Q. Well, let's take a look at what's been marked as
12 Exhibit #25, and in the -- Can you tell me what is the
13 statement that's made on that page showing the NASCAR cars
14 at the bottom left?
15 A. There are no additive in our tobacco, milligrams
16 tar, 1.1 milligram nicotine average per cigarettes by FTC.
17 Q. Would you consider that a noticeable part of the
18 advertisement?
19 A. It's there. It's bold. It looks to be in the
20 same -- In this case it looks bigger than the TMN levels,
21 which are the levels agreed to with the government to put
22 that in there. I think it varies by ad and where it goes
23 on an ad. In this instance this ad has a lot going on in
24 the background. I mean, if we look at others, you know,
25 it's more prominent in some places.

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Q. Sure. But if you didn't know it was there, would it not be easy to miss in this particular ad?

A. I'd have to say in this particular ad that there's a lot going on in that picture, but it's clearly there.

Q. Okay. What does it mean there are no additives in our tobacco?

A. That we do not add anything to the tobacco.

Q. Okay. What's the difference between that statement and saying 100 percent tobacco?

A. Well, one says what's in there -- Well, this -- Well, you're focusing specifically on this legend?

Q. Comparing that to 100 percent tobacco.

A. Well, let me go ahead and just address the legend then. When we launched, we spoke to true taste, 100 percent tobacco, and no additives. And there were questions raised by our critics in the anti-tobacco industry about people could think that perhaps they were talking about the filter being either all tobacco or somehow it was -- had additives in it. And when this issue came up, we decided because we don't have -- we don't have any interest in misleading people, that we would be happy to put any kind of legend in there that helped clarify it. But I will just tell you that throughout my experience developing this product, talking to thousands of adult

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1 smokers, when you generally say here's a cigarette made
2 from 100 percent tobacco, no additives, they immediately
3 understand they're talking about what they put in the
4 tobacco. And I have never heard any -- or on a rare
5 occasion anyone say there's a filter on this cigarette.
6 Q. Is it possible to consume a new Winston cigarette
7 without also consuming additives?
8 A. I don't know the answer to that. What I do know
9 is that when we tell people that there are no additives,
10 it's 100 percent tobacco, no additives for true taste, they
11 are assuming you're talking about what did they put in the
12 tobacco.
13 Q. And do they also assume that when they consume
14 the product, that they will not be consuming additives?
15 A. I don't know that.
16 Q. Well, isn't that the impression you want to
17 create?
18 A. I want to create the impression that this is the
19 only leading brand made from 100 percent tobacco that
20 delivers true tobacco taste.
21 MR. CASSIDY: Let's mark this as the next
22 exhibit.
23 (Exhibit #27 marked for identification.)
24 Q. Can you please identify what's been marked as
25 Exhibit #27.

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A. It's a pack of Winston full flavor box.

Q. When someone buys this particular product, what do they normally do with it?

A. Well, they may read what's on the pack, and I suspect they open it and take out a cigarette and smoke it.

Q. It just, in the normal course of events, does not collect dust for a number of years on someone's shelf, right?

A. I would hope not.

Q. Okay. And when someone smokes a new Winston cigarette, what occurs?

A. Literally how do you smoke a cigarette?

Q. Yeah.

A. Take it out and light the tobacco end and inhale.

Q. And when you light the tobacco end, does something burn?

A. Yes.

Q. And what is that?

A. Tobacco.

Q. And what else burns?

A. The paper.

Q. And then is smoke created from the burning process?

A. Yes.

Q. And is smoke then drawn into the consumer's

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lungs?

A. It can be.

Q. Well, when you smoke --

A. Most of the time it is, yes.

Q. Okay. And is not the smoke that's created by both the burning tobacco and the cigarette paper combined together and drawn into the consumer's lungs?

A. I suspect a part of the paper burning, that does happen. I've never seen the information on what happens to the smoke of the burning paper.

Q. Well, do you have any reason to doubt that it doesn't combine with the smoke from the tobacco?

A. I suspect part of it does, yeah.

Q. And do you have any reason to doubt then that that total amount of smoke is, while the person is puffing on the cigarette, brought into that person's lungs?

A. A portion of it I suspect is.

Q. Is there any way to smoke a new Winston cigarette then without consuming additives?

A. Well, again, I have to get back to what this is communicating to smokers, adult smokers, that I have talked to. I mean, I understand the point you're going to, and all I can tell you is among the thousands of adult smokers that I have talked to, they understand when we say this cigarette is made from 100 percent tobacco and nothing

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else, they understand they have not put any flavorings in the tobacco, and therefore it delivers true tobacco taste. And they understand that. And from the adult smoker reaction we've seen, they appreciate the taste of that cigarette. So technically can we discuss that there's paper around it? I think adult smokers know there's paper around every cigarette and there's a filter on every cigarette.

Q. But do adult smokers understand that the cigarette paper has additives in it?

A. I think they do understand that paper is manufactured, and as a result, it has additives in it.

Q. But --

MR. BEACH: Let's mark this as the next exhibit.

(Exhibit #28 marked for identification.)

Q. I'm going to hand you what's been marked as Exhibit #28. Can you please identify this?

A. It's a piece of paper.

Q. And where did that piece of paper come from?

A. Your pad.

Q. Is that the same type of paper that you use in cigarettes?

A. No.

Q. What's special about cigarette paper as opposed to notepad paper?

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A. I don't know.

Q. If I took out a match right now and lit that piece of paper, what do you think would occur?

A. It would burn.

Q. It would burn quickly, wouldn't it?

A. It would burn.

Q. Isn't cigarette paper designed to burn at a specific rate different than regular paper?

A. I don't know. I've heard the use of the term burn agents before. I don't know exactly what they do. I think they control the -- make sure the paper doesn't burn too fast or too slow, but I don't know.

Q. Do you think the consumer has an understanding that there are burn agents put into cigarette paper to affect the burn rate?

A. I don't know. Again, I can just go back to the adult smokers that I have talked to understand when we say this cigarette is made from 100 percent tobacco, they understand that you have not added anything to the tobacco. I have not heard in my discussions with lots and lots of adult smokers a large number of people saying, but wait a minute, this has paper on it.

Q. What are burn agents found in cigarette paper?

A. I'm not sure what they are. I've just heard that term. And I think there are things done to make sure the

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1 cigarette paper burns evenly.

2 Q. Are there not special chemicals applied to or

3 found in cigarette paper to affect the burn rate?

4 A. I think they use those, but I'm not the one to

5 ask. You'd have to ask people that actually make the

6 cigarettes.

7 Q. And when you smoke a new Winston cigarette,

8 aren't you drawing in those burning agents into your lung

9 that come -- that are found in the cigarette paper?

10 A. I don't know how that process transpires. Again,

11 I agree that there's probably some part of the paper

12 burning that is part of the mainstream smoke. But again,

13 I'll just have to go back to -- I know what you're driving

14 at here, but I'll have to go back to the adult smokers that

15 I talked to about this brand, and literally thousands, and

16 when we talk about this, this is a No Bull brand with a No

17 Bull attitude, and it's made from 100 percent tobacco, they

18 get it. They like the taste of it. And I do not think

19 they're going to be surprised to find out that this tobacco

20 rod -- in fact, I've not heard them be surprised, is

21 encased in paper and it has a filter on the other end.

22 Q. But you haven't -- You're creating the impression

23 that if you smoke this cigarette, you're not consuming any

24 additives, correct?

25 A. No, I'm creating the impression that this

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1 cigarette is made from 100 percent tobacco, unlike any
2 other leading brand out there. There is no other leading
3 brand that does not include cocoa, sugar, licorice,
4 propylene glycol. In fact -- And this is the only brand
5 where we use none of these flavorants, therefore when you
6 smoke this cigarette, you're going to taste nothing but
7 tobacco. Now, is it true that perhaps the paper burning?
8 Perhaps. I'd have to talk to somebody. But the overriding
9 take from the adult smokers who showed interest in this in
10 development, showed interest in this in the State of
11 Florida, showed interest in this when we launched it
12 nationally, understand that point.
13 Q. They understand that point, or they have not been
14 informed of the point that there are additives actually in
15 the cigarette when they smoke the cigarette?
16 A. I think they are aware that paper is not a
17 naturally occurring thing, that there were probably
18 additives in order to make that paper. For instance, glue
19 to hold that paper on there, there are additives in glue
20 because there is no such thing as a glue tree. You have to
21 make glue. And you know, have they thought about it
22 consciously? I can't tell you that. What I tell you is
23 it's 100 percent tobacco, and that's what they understand.
24 Q. Do you think anyone that's smoking a new Winston
25 cigarette has an understanding that they're also consuming

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1 glue chemicals during the smoking process?

2 A. I don't know the answer. I think if you asked

3 adult smokers do you think there is adhesive used to hold

4 this paper on the cigarette, most would say, yes, it

5 probably has to be adhered somehow.

6 Q. Do you think it's a common understanding that the

7 cigarette paper used in cigarettes is far different than

8 the cigarette paper found in notepads?

9 A. I suspect most people think that you -- this

10 piece of paper is different than this, that you couldn't

11 pull this off and write on it like you could here.

12 Q. Have you ever done any test to measure that

13 perception?

14 A. No. What I have tested extensively is what do

15 you think about a cigarette made from 100 percent tobacco

16 for true tobacco taste. And what adult smokers say is

17 that's darn interesting, I'd like to taste a cigarette that

18 was made from nothing but 100 percent tobacco.

19 Q. Are you familiar with the slogan "Kiss your

20 additives good-bye?"

21 A. Yes.

22 Q. And who has used that slogan?

23 A. Winston.

24 Q. How can you kiss your additives good-bye if you

25 are consuming additives from the cigarette paper when you

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1 smoke a Winston cigarette?

2 A. Because, again, we're dealing with what do adult
3 smokers think a cigarette is made from. And when I tell
4 them -- I have also got "Wake up and taste the tobacco"
5 running simultaneously with "Kiss your additives good-bye"
6 in the same outlets, that, to me, even more clearly spells
7 out the fact that the tobacco in here is nothing but
8 tobacco. And I think adult smokers, my experience would
9 indicate, that they understand that a cigarette made from
10 100 percent tobacco does not have flavorants in the
11 tobacco, and that's a consensus that I've heard.
12 Q. I'll ask you one final question on this topic.
13 Are you trying to convey a message to consumers that they
14 will not consume additives when they smoke a new Winston
15 cigarette?
16 A. I'm trying to convey to adult smokers that this
17 is the only leading brand made from 100 percent tobacco, no
18 additives for true tobacco taste, and that's no bull. And
19 that's what I'm trying to convey in the context of No Bull,
20 which is another point I haven't talked much about. The
21 whole idea here is No Bull. It's a No Bull attitude and
22 it's supported by a cigarette that's made from 100 percent
23 tobacco, no bull. That's how it works. This isn't just a
24 campaign that says you won't find additives anywhere in
25 this pack. That's not what this campaign is. It's about

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1 "This ain't no rest stop. 100 percent racing. No
2 additives. True taste. No Bull." It's the whole message
3 of straight up, what you see is what you get. It's not
4 about every ad saying here's a cigarette, you won't find
5 additives in any component in this cigarette. It's says
6 this is made from 100 percent tobacco, unlike any other
7 leading brand.
8 I mean the question for the adult smoker is is
9 this different than my Marlboro? You better believe it's
10 different. This tobacco has nothing in it but tobacco.
11 This has cocoa, sugar, licorice, propylene glycol,
12 glycerine. This tastes different than this for a reason
13 because this has nothing but tobacco in it. And that's the
14 pitch we're making, true taste. That's what I've -- That's
15 how I've heard it play among adult smokers.
16 MR. CASSIDY: Thank you.
17 WITNESS: You're welcome.
18 MR. BEACH: See you in an hour.
19 VIDEOGRAPHER: We're going off the record at
20 12:03.
21 (There was a break taken.)
22 VIDEOGRAPHER: We're back on the record at 1:00
23 p.m.
24 Q. Mr. Leary, do you understand that you're still
25 under oath?

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A. Yes.

Q. Is nicotine added to the tobacco found in new Winston cigarettes?

A. No.

Q. Is nicotine at any point and time of the manufacture and production of new Winston cigarettes removed from tobacco found in new Winston cigarettes?

A. I'm not familiar exactly with the process. What I can tell you is nicotine is not added to Winston cigarettes or any other cigarettes we make, to my knowledge.

Q. Is nicotine removed from new Winston cigarettes?

A. I don't know the processing that in depth. I can tell you that nicotine is not added to Winston.

Q. Well, you might not know the process in depth, but do you have any understanding as to whether nicotine is removed from the manufacturing -- during the manufacturing of new Winston cigarettes?

MR. BEACH: Objection, asked and answered twice.

A. No.

Q. Who would be most knowledgeable with respect to these two questions that I have just asked you on the new Winston cigarettes?

A. I think Denny Potter could probably help on that.

Q. Are any genetically engineered tobacco strands

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1 incorporated into the tobacco use of new Winston
2 cigarettes?
3 A. Not to my knowledge.
4 Q. Who would be most knowledgeable with respect to
5 that question?
6 A. Probably Denny Potter.
7 Q. Are any pesticide residues found in new Winston
8 cigarettes?
9 A. I don't know the answer to that. I know that
10 from the time we purchase the tobacco to the time it goes
11 into the cigarettes and on the store shelf there's nothing
12 added by us.
13 Q. Are you aware as to whether pesticides are used
14 in the cultivation of tobacco plants?
15 A. I'm vaguely familiar with the fact that
16 fertilizers and pesticides are used in the growing of the
17 tobacco that we buy.
18 Q. Does R.J.R. Reynolds do anything to remove any
19 pesticide residues that might accumulate on the tobacco
20 used in its products in new Winston cigarettes?
21 A. Not to my knowledge.
22 Q. In marketing new Winston cigarettes has R.J.R.
23 Reynolds relied upon psychographic marketing research?
24 A. Well, the term psychographic can mean the
25 understanding -- at least in my opinion, the understanding

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of adult smokers' thoughts and attitudes about certain topics. And in the course of developing new Winston we talked to thousands of adult smokers about this proposition and got their reactions to the cigarette being 100 percent tobacco, we got the reaction to ads and statements they made -- the ads made, and their attitudes about those statements. So in that regard we explored that general area I guess.

Q. Okay. Can you trace the history of the new Winston cigarettes from its conception to its evolution and ultimately to its national launching for me?

A. Well, that total process to date probably is a three-year process, so there's any number of things. But just to give you the overall key elements of it, we started out in -- I'm trying to place when we actually started on this, it was probably about three years ago, which would put us in 1995, trying to come up with an idea that would improve the positioning of Winston among adult smokers. We knew we wanted a strategy that had both an attitudinal or imagery component to it, in addition we wanted a product point of difference that would interest adult smokers of competitive brands in trying Winston, and just as importantly that would give the brand a reason to adopt its particular attitude. In this case No Bull, with a product configuration that's No Bull as well. We developed that

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1 strategy, then we employed several advertising agencies to
2 try and optimize the communication of that proposition to
3 adult smokers. In July of 1996 we launched the Winston No
4 Bull 100 percent tobacco true taste proposition in the
5 State of Florida and made a decision to expand that
6 nationally after a very successful test market. We made
7 that decision probably in May of 1997, and we launched it
8 nationally in 199 -- August of 1998.
9 Q. In terms of what was occurring in 1995 when you
10 were developing the strategy, can you describe that process
11 in a little more detail?
12 A. Well, Winston had a long history of not so
13 successful marketing efforts, and numbers -- numerous ideas
14 were tried to improve the brand's performance among adult
15 smokers. There were various product points of difference
16 that were tried. For instance, at one point we introduced
17 something called the wrap that was a special packaging
18 configuration that provided more of a seal to keep the
19 tobacco fresher. We also had attempted Winston Select,
20 which was a line extension. So the reason for this is to
21 give you some background, and we had tried a number of
22 things. What we wanted to make sure was that we had a
23 strategy that was unique and that provided both an and
24 attitudinal component and a product point of difference
25 that worked to build the positioning as quickly as possibly

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1 and as credibly as possible among adult smokers. I'm
2 trying to think what else.
3 Q. I'm a little more interested in the process right
4 now. I mean, did you use focus groups?
5 A. Yes.
6 Q. Okay. Did you have planning sessions amongst
7 yourselves?
8 A. Yes.
9 Q. Did you bring in outside consultants as part of
10 that planning session --
11 A. We brought in outside agencies to help.
12 Q. Could you describe who those outside agencies
13 were?
14 A. Who they were?
15 Q. Yeah.
16 A. Long, Haymes and Carr was one of them. We used a
17 group out of Tampa, Florida called West Wayne. Actually, I
18 think they were called the -- I'm not sure what they were
19 called. Right now they're called West Wayne. We used
20 briefly a group in Greensboro called Trone Advertising.
21 Q. Well, what was West Wayne's purpose in this?
22 A. They were helping us explore ways of
23 communicating the strategy to adult smokers.
24 Q. Were you having anyone that was going out and
25 testing the attitudes and beliefs of smokers as to what

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1 would appeal to them?

2 A. We went out and tested the strategy among adult

3 smokers several times with several different campaigns that

4 were designed to communicate this to adult smokers. So

5 yes, over the course of development, we spent a great deal

6 of time talking to adult smokers.

7 Q. And were you using independent agencies to go and

8 do that research?

9 A. We used what's called a moderator.

10 Q. And could you describe that more?

11 A. We -- There's a person when you do a focus group,

12 there's an individual that sits at the head of the table

13 and asks questions of adult smokers, and we would sit

14 behind a two-way mirror, or one way, whichever it is where

15 you could see through it both ways, and learn what adult

16 smokers thought of the No Bull proposition.

17 Q. Did you specify in any of these focus groups as

18 to the age of the participants of the group?

19 A. Always.

20 Q. Okay. And what were some of the age ranges that

21 were specified?

22 A. Primarily -- I thought you were asking about did

23 you know the age of the respondents. The age group that we

24 talked to primarily was 21 to 34 year old adult smokers.

25 We did work among Winston franchise smokers as well, which

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range from 21 to probably 49.

Q Did you ever have any test groups that composed of a different age range than 21 to 34?

A. We did work among Winston smokers that were older than 34, yes.

Q. Did you ever have an age range, for example, that covered 21 to 24?

A. We may have. I don't recall. We may well have, at times when we were talking to 21 to 34 year old adult smokers, done one group among 21 to 24 adults and one group among 25 to 34 adult smokers.

Q. Do you have a memory of that occurring?

A. We may have done it. I don't have a specific memory.

Q. Okay. In terms of the planning session, I assume that occurred in 1995 with respect to this, who were the key players within R.J.R. Reynolds at those sessions?

A. Well, thinking back to the people that were on the brand, there may have been -- at one time I had an individual by the name of Jackson Roper that was helping me on Winston. At one point there was a lady by the name of Cynthia Nicholson who was helping on this. Reggie Pasterczyk in research was part of this. Denny Potter was part of this.

Q. And this is a 1995 time period we're talking

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about?

A. I'd have to go back and look. I mean, some of those people helped me throughout, for instance, Reggie Pasterczyk, I can't recall the exact dates, but those were various people that --

Q. What was her role with the company at that time?

A. She worked in the research department.

Q. Well, I'm sure a lot of people --

A. You mean what was her title?

Q. Yeah. Do you know?

A. She may be a senior research manager.

Q. And is she still with the company?

A. Yes.

Q. Do you know what position she holds today?

A. I think she's a senior research manager.

Q. Is she one of the very top research managers in that department?

A. She's one of the research managers. I mean, there's -- I don't know how many senior research managers there are, maybe three or four of them and she's one of them. She doesn't head up the research department.

Q. Mr. Weber heads up the research department?

A. Yes, now.

Q. Okay. Did you have any forecasting or planning session workshops with respect to new Winston cigarettes in

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1995 or '96?

A. Did we forecast what we thought this might do? Is that what you're asking?

Q. I guess it's a little broader question. I'm trying just to figure out how the idea of the new Winston cigarettes developed. And were there planning sessions in which maybe multiple ideas were discussed, and out of that came the kernel, so to speak, that developed into the new Winston cigarette?

A. There were probably other ideas bounced around. What is a little different about this is we arrived at that particular strategy very early on, and the whole idea of true to one's self, authenticity, backed up by true to one's self -- excuse me -- true to one's self, 100 percent tobacco type cigarettes was one of the -- came early on. There was another project that went on simultaneously looking at other positionings for Winston. But this process, unlike some where there are fifteen ideas being explored simultaneously, this project was pretty much focused on this strategy from near about the outset.

Q. What was the other project that you just mentioned?

A. Doug Shouse headed up another effort to develop some alternative positionings on this, but they were not pursued.

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Q. Well, when you say alternative positionings on this, were those specific to Winston cigarettes, or were they on broader topics?

A. Winston.

Q. Is there a common popular perception that additives are harmful to on one's health?

MR. BEACH: Objection, calls for speculation, lack of foundation.

A. I don't know.

Q. Do you think additives might be harmful to one's health?

A. I don't think additives in cigarettes -- Well, let me back up and say that the advertising for the Winston proposition carries the same warning it carries for any other cigarette, so I believe the risks are the same with this cigarette as any other.

Q. Well, I was just asking as a general proposition.

A. Do I think additives in general are more harmful?

Q. Do you think additives in general are harmful to one's health?

MR. BEACH: Objection.

A. In general, no.

Q. Have -- Do you purchase food?

A. Yes.

Q. Outside of restaurants?

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A. Yes.

Q. Do you go to grocery stores and buy food?

A. Yes.

Q. Have you ever bought any organic food?

A. I think I've bought rice cakes before. I don't know that they were organic as much as they were low fat, which is why I bought them.

Q. Have you ever seen, in whichever place that you shop at in the vegetable section organic food on display?

A. Yes.

Q. Have you ever noticed the price of those products as opposed to the prices of the nonorganic vegetables that are on display?

A. I think I have.

Q. And what type of observation could you draw from comparing those two prices?

A. The organic products are more expensive.

Q. And do you have any understanding as to whether people buy organic food, even thought it's more expensive?

A. I think people buy organic food.

Q. Why would someone buy organic lettuce that costs more than nonorganic lettuce?

MR. BEACH: Objection, speculation.

A. Because they prefer food that's grown with natural fertilizers and natural pesticides I assume.

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1 That's the point of difference I think in organic is in the
2 growing stage no fertilizer or pesticides that are not
3 natural are used.
4 Q. Well, what is the basis of the preference? It's
5 certainly not on price.
6 MR. BEACH: Same objection, argumentative.
7 Q. What do you think is the basis for peoples
8 preference, or some peoples preference, for an organic
9 product as opposed to a nonorganic product?
10 MR. BEACH: Same objection.
11 A. Some people would prefer that there not be
12 synthetic fertilizers and pesticides used to grow that
13 product I assume.
14 Q. Is it fair to say they prefer purchasing a
15 product without synthetic fertilizers and pesticides used
16 because they believe such a product is healthier for them?
17 A. They may.
18 Q. Does a cigarette that contains no additives pose
19 any less of a health risk than a cigarette with additives?
20 A. The new Winston carries the same warning as any
21 other cigarette, and we don't make any claims as to its
22 different health affect than other cigarettes. I need to
23 point out though, given your conversation about organic,
24 that we're not making any organic claims is it relates to
25 new Winston. This brand is made with tobacco that's grown

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1 commercially, all tobacco nearby that's grown -- that's
2 grown commercially is grown with fertilizers and pesticides
3 that aren't listed as additives on any food product that is
4 bought to my knowledge. So this is a completely different
5 thing than an organic, so we don't leave an impression that
6 we're making an organic claim here, which we're not.
7 Q. But you are putting forward that there's no
8 additives in these cigarettes, correct?
9 A. We are putting forth the claim that this is made
10 from 100 percent tobacco with no additives, and we add
11 absolutely nothing to the tobacco during -- from the time
12 we purchase it to the time we sell it, other than water and
13 CO2 is used in the process, which is gone at the end.
14 Q. Does a cigarette that claims to contain no
15 additives imply that it is healthier to smoke than a
16 cigarette that does contain additives?
17 A. I do not believe so. We're putting the same
18 warning on this cigarette as we put on any other cigarette,
19 and in many -- at every opportunity when I've been
20 interviewed about this product, I have always made the
21 point that we suggest that adults consider those serious
22 warnings on ads and packs of this cigarette, just like any
23 other cigarette before they use it.
24 Q. With respect to the product formula of the
25 cigarette, do you have any understanding as to what is the

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popular perception of new Winston cigarettes?

A. As to the product formula?

Q. Uh-huh.

A. A percentage of adult smokers are aware that Winston has no additives. I do know that.

Q. Are consumers purchasing the cigarette because they like a cigarette that has no additives irrespective of the brand image?

A. What I have heard from adult smokers on this is that they like the idea of a cigarettes made from 100 percent tobacco. I've heard descriptions about this cigarette as it tastes smoother than the previous Winston. So my perceptions in talking to adult smokers is yes, they like the taste of a cigarette made from 100 percent tobacco and no additives, and they certainly like it better than the taste of the previous Winston.

Q. Have you received any information that any of the consumers that like the cigarette because it contains no additives are operating under the belief that a no additive cigarette is not as dangerous to their health as a cigarette with additives?

MR. BEACH: Objection to the form of the question, Counsel is testifying, assumes facts not in evidence.

A. Can you read it again, please.

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Q. Have you received any information that persons that are purchasing the Winston -- the new Winston cigarette because it has no additives are operating under the belief that a cigarette without additives may be less dangerous to one's health than a cigarette with additives?

A. In the course of our research and talking to adult smokers, I have heard on a rare occasion consumers discuss what they have read about additives in newspapers and other media reports. I have heard no discussion ever of any adult smokers speaking to the fact that the advertising and the message that we put out on Winston in any way communicates anything in that regard.

Q. Have you ever received any information that any adult smokers are concerned about additives found in cigarettes independent of the dangers listed from cigarette smoking by the Surgeon General?

A. I think that's similar to the previous question, and I have heard consumers on rare occasions speak to the -- and discuss in focus groups what they had heard in the press about additives in cigarettes not being a good --

Q. Not being a good specifically --

A. They've -- I've heard, again very rarely, but consumers discuss -- adult smokers discuss what they had read in the paper about the negative effects of the additives that the cigarette manufacturers were putting in

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1 cigarettes, but never have I heard any adult smokers in
2 exposure to the Winston materials say anything to the
3 effect that Winston is making some sort of statement about
4 the health effects of this cigarette.
5 Q. Well, should any consumer understand that a no
6 additives cigarette does not contain carcinogenic
7 compounds?
8 A. I would not think that given every fourth ad and
9 every fourth pack carries a statement that says this
10 product causes lung cancer, emphysema, and heart disease.
11 Q. Should any consumer understand that a no additive
12 cigarette is not addictive?
13 MR. BEACH: Objection, calls for speculation.
14 A. I don't know. I do not think -- I mean, we've
15 not made any statements about the addictive nature of --
16 difference of the addictive nature of this cigarette versus
17 any other, so I would not expect that to be the case. I
18 certainly have never heard it.
19 Q. Should the consumer understand that a no additive
20 cigarette is a natural cigarette?
21 A. Adult smokers should understand that Winston is
22 the only leading brand made with 100 percent tobacco.
23 Q. What is a natural cigarette?
24 A. I'm not sure what a natural cigarette is. What
25 this cigarette is, as what we state it is, which is 100

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1 percent tobacco, no additives. I mean I guess a totally
2 natural cigarette -- I don't know. We don't use that term
3 in relation to Winston and --
4 Q. You have never used the term natural cigarette in
5 any planning memorandum with respect to the new Winston
6 cigarette?
7 A. It may have been any number of terms used in the
8 development of this, but what the proposition has presented
9 since its launch is 100 percent tobacco, no additive.
10 Q. Well, of the any numbers of terms that might have
11 been used, was the term natural cigarette ever used with
12 respect --
13 A. I suspect it was.
14 Q. And when that term was used, what meaning was
15 given to that term?
16 A. That's probably a broad term used to encompass
17 this type of -- this type of cigarette. It could be used
18 to describe this. It wasn't used in the communication to
19 adult smokers.
20 Q. And what are the characteristics of that broad
21 term?
22 A. I suppose part of that broad term could include
23 100 percent tobacco and no additives. I've not studied the
24 perception of that term among adult smokers extensively.
25 Q. What other elements of that broad term besides

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1 100 percent tobacco and no additives could be included?

2 MR. BEACH: Just for clarification of the record,

3 are you asking for the witness' own use of this term, or

4 are you asking him to speculate about the use of others'

5 use of the term?

6 MR. CASSIDY: The witness has testified the term

7 was used by R.J.R. Reynolds personnel in the development

8 and strategy of new Winston cigarettes. I'm asking for a

9 full understanding of that term.

10 MR. BEACH: Well, I would -- I don't believe that

11 you fairly characterized what his testimony was. But if

12 that helps you understand what the question is, Ned, why

13 don't you go ahead and try to give him an answer.

14 A. I think natural is a term that can mean a number

15 of things, and I think it probably was used in the

16 development of this, some people used it to describe this

17 proposition.

18 Q. So if some people within R.J.R. Reynolds I

19 presume used this cigarette -- used the term -- used the

20 statement no additives and 100 percent tobacco to mean a

21 natural cigarette, would it be unreasonable to assume that

22 consumers also understand a no additive cigarette is also a

23 natural cigarette?

24 A. Some could.

25 Q. But is, in fact, a no additive cigarette a

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1 natural cigarette?

2 A. I think it's a term that some could use to

3 describe it. We've chosen not to use that term to describe

4 it. To be more specific as to what exactly is this

5 cigarette, and the terms that we elected to use to describe

6 it were 100 percent tobacco, no additives.

7 Q. Is there any particular reason why you have

8 chosen not to describe the new Winston cigarette as a

9 natural cigarette in terms of its marketing?

10 A. Yes, we believe 100 percent tobacco, no additives

11 is the clearest description of what this cigarette is.

12 Q. But is there something that's either added to

13 that cigarette or missing from that cigarette that would

14 not qualify it as a natural cigarette?

15 A. I don't know the answer to that.

16 Q. Do you have an understanding as to the product

17 claims made by America Spirit cigarettes?

18 A. Only to the extent that I believe they claim to

19 be no additive, and they may say that they don't have any

20 reconstituted tobacco. I'm not sure. I think they have

21 literature out that I have seen before, but I'd have to see

22 it again to really recall what their claims are making.

23 Q. Are you aware that they claim that they are a

24 natural cigarette?

25 A. That sounds familiar.

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Q. What is it, if you have any knowledge, that makes America Spirit cigarette a natural cigarette, but does not make a new Winston cigarette a natural cigarette?

A. I do not know. We don't use the term natural to describe this. What we say is 100 percent tobacco, no additives. I can describe why that is on Winston. I don't know why America Spirit picked the word natural.

Q. Was the America Spirit at all an inspiration for the new Winston cigarette?

A. No.

Would you please mark this as the next exhibit

(Exhibit #29 marked for identification.)

Q. Mr. Leary, I've given you what's been marked as Exhibit #25. I'll represent that these are pages that I printed off the R.J.R. Reynolds website on June 27th, 1998.

MR. BEACH: Counsel, I think you misspoke. It's Exhibit #29.

MR. CASSIDY: I'm sorry. Yes, I did misspeak.

Q. Have you ever, so to speak, visited the R.J.R. Reynolds Nabisco website?

A. No.

Q. Do you have internet access?

A. Let me rephrase that. We have something and I think it's called passport, but I don't think it's R.J.R. Nabisco, I think it's R.J. Reynolds Tobacco.

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Q. Okay. Do you have internet access at your desk?

A. Yes.

Q. Do you use E-mail?

A. Yes.

Q. Do you communicate with respect to new Winston cigarettes through E-mail?

A. Sometimes.

Q. In the course of the production of documents did you produce E-mail messages on new Winston cigarettes to counsel?

A. Usually the way I use the E-mail is when I write a document that's meant for broad circulation, I print it off into hard copy, and it's captured in the document retention area.

Q. What about messages that are not meant for broad circulation, were those printed out and provided to counsel?

A. The things that -- if I get a memo on E-mail that I need to keep or look at or study, I print it off into hard copy and it's captured.

Q. What about -- Is there a possibility of any type of message that would not be for broad circulation or would not be needed for you to look at that's kept within your electronic mail system and has not been printed out?

A. I don't think there's anything of consequence

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1 unless it's let's go to lunch today, and those -- I usually
2 don't print those out.
3 Q. Let's take a look at page 2 of this exhibit, or
4 the second page of the exhibit. What is stated here?
5 A. Are you on page 2 of 4 or are you on page 1 of 4?
6 Q. It's the second page of the exhibit. I think
7 the --
8 A. Okay. I'm sorry.
9 Q. -- internal pages numbers are --
10 A. Okay. The first page then?
11 Q. Yeah.
12 A. What is this? This is the -- looks like it's a
13 board of directors and senior management list.
14 Q. Okay. For which company?
15 A. R.J.R. Nabisco.
16 Q. And what's the company identified at the very
17 bottom of the page?
18 A. R.J. Reynolds Tobacco Company.
19 Q. Okay. Let's flip the page, please. And now
20 looking at what's marked at the bottom as page 2 of 4, but
21 it's the third page within the exhibit. At the top is that
22 a list of the senior executives of R.J.R. Reynolds Tobacco
23 Company?
24 A. I think that's probably supposed to be headed up
25 by operating company management, according to this thing at

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1 the top under R.J.R. Nabisco. It looks like it goes
2 through the board of directors, senior management, and I
3 think it's operating company management.
4 Q. Okay. But at the top of what's the third page of
5 this exhibit, is that the senior management of R.J.R.
6 Reynolds Tobacco Company?
7 A. I guess you could describe them as that. I
8 actually think it is actuality the operating committee, or
9 executive committee. I think that's a fair description.
10 Q. And this is one matter that you raised yesterday.
11 I believe you testified that you were not aware as to
12 whether -- or it was your understanding that R.J.R.
13 Reynolds Tobacco Company did not have a board of directors.
14 A. That's right.
15 Q. Okay. And looking at this here you're saying
16 that this is a committee, but not, in your understanding, a
17 board of directors?
18 A. No. I think as it says here, the first thing is
19 the R.J.R. Nabisco board of directors, and that's the only
20 board of directors that's listed. This is a senior
21 operating committee, but it's just not the term that's used
22 to describe them. I don't think they have the duties of a
23 board of directors.
24 Q. Okay. And could you explain what their duties
25 are as opposed to board of directors duties?

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A. Well, for one they come to work at the company every day and manage the operations. I think a board of directors meets every quarter or something. They have every-day operating responsibility.

Q. Have you ever attended a meeting of the board of directors of R.J.R. Reynolds Tobacco Company, and not -- within the last few years? And I'm making a distinction between R.J.R. Reynolds Tobacco Company and R.J.R. Nabisco.

A. I don't think there is a board of directors for R.J.R. Reynolds Tobacco Company.

Q. Well, I'm going to continue on and --

A. If you're referring to this group of the operating committee.

Q. Well, I just want to continue on. Okay. Let's go into this document, and I apologize for -- maybe I should have paginated it separately. But if you to go revitalizing core brands, and then I think you pass that and then if you go to the next page, which would be marked in the lower left as 2 of 5.

A. Uh-huh.

Q. Okay. Do you recognize the language here at all as coming from any other document that's been printed by R.J.R. Reynolds?

MR. BEACH: What language?

Q. Well, the actual text of this whole section here.

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1 I'll be more specific. Is this from the annual report that
2 was distributed to shareholders?
3 A. That's what it says at the top of the top of the
4 page.
5 Q. Okay. Thank you. I'm looking now at 2 of 5, and
6 in that first paragraph it talks about Winston at the top
7 next to that bar, next to the chart there of Winston
8 domestic volume. Are you there?
9 A. Uh-huh.
10 Q. And within that paragraph it says, quote,
11 "Winston gained and held higher -- held higher market share
12 with volume of 9 percent in the second half of 1997." How
13 many more cigarettes would that be sold?
14 A. That would be 13.87 minus 11.27, which is -- what
15 is that? 2.5. Is that correct?
16 Q. Well let's round it off to 2.5, yeah.
17 A. It's 2.5 billion cigarettes.
18 Q. 2.6, but --
19 A. 6, you're right. It's my math.
20 Q. 2.6 billion cigarettes?
21 A. (Nods head affirmatively)
22 Q. So presumably that's a lot more cigarettes being
23 sold in California also?
24 A. These are national numbers.
25 Q. But if it's up nationally, it would be up in

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1 California?

2 MR. BEACH: Calls for speculation.

3 Q. Well, do you have any idea as to how the

4 cigarette did at the end of '97 in California?

5 A. No.

6 Q. Do you have any idea how it did in Massachusetts?

7 A. No.

8 Q. Okay. Is that a fairly large increase on a

9 half-year basis?

10 MR. BEACH: Relative to what?

11 Q. In your experience as working in the tobacco

12 industry.

13 A. It's a good increase. Up 9 percent, it's a good

14 increase.

15 Q. Have you ever worked on a brand that had that

16 much of an increase in a six-month period?

17 A. I may have.

18 Q. Do you have any memory as you sit here today?

19 A. Camel may have been up like that. I can't recall

20 exactly.

21 Q. When might that have occurred?

22 A. Back when I had it between '90 and '93.

23 Q. What about in 1998?

24 A. I wasn't -- I can't recall.

25 Q. Okay. Well, how has it done in the six months

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1 into 1998?

2 A. It's done okay.

3 Q. Well, in terms of percentage increase, has it

4 gone up?

5 A. I really don't know the first half of '98 versus

6 the first half of '97. I'd have to look.

7 Q. Well, do you have the figures for the first two

8 quarters of '98?

9 A. I can get those. I don't have them with me.

10 Q. Okay. Now, let's go to the next page, which is 3

11 of 5. And within this it says "The "No Bull" campaign

12 designed to establish Winston as a brand with a no

13 nonsense, "straight-up" attitude, leverages a unique

14 product point of difference", colon, "a

15 100-percent-tobacco-blend with no additives for true

16 taste." I'm now going to turn to the next page, which is 4

17 of 5.

18 MR. BEACH: And the last line of that says true

19 tobacco taste.

20 MR. CASSIDY: I apologize if I misread that.

21 Q. If we go to the next page, 4 of 5, I'm going to

22 read within this little block section. "The campaign

23 establishes a strong attitude for Winston as an authentic,

24 "straight-up" brand with a unique point of difference: no

25 additives, 100 percent tobacco blend, true tobacco taste."

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My question is do you inform customers that the Winston cigarette is a 100 percent tobacco blend, or do you inform them that it's 100 percent tobacco?

A. I believe what we say in our ads is 100 percent tobacco.

Q. What's the difference between 100 percent tobacco blend and 100 percent tobacco?

A. None, to my knowledge.

Q. What is -- What is a tobacco blend?

A. That's a blend of tobacco.

MR. CASSIDY: Let's have this marked as the next exhibit.

(Exhibit #30 marked for identification.)

Q. Could please review what's been marked as Exhibit #30, which is a document dated August 3rd of 1995.

A. Creative direction on NO B.S. Campaign.

Q. And can you identify for me who was the person who authored this document?

A. Joanne Coggins. I think she was a manager helping me.

Q. And was she a manager on Winston at the time?

A. Yes.

Q. So was her role there somewhat equivalent to the roll you had once as a manager of Camel?

A. Excuse me? I'm sorry. I was looking at this.

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Q. Let's forget that question. How many managers did you have on Winston at the time?

A. In August of 1995? I can't recall. Two or three either managers or senior managers probably.

Q. Okay. Do you see that your name is listed on this document?

A. Yes.

Q. Okay. Do you have any idea as to who the handwriting that's put at the top of this memo might belong to?

A. Yes.

Q. Who would that person be?

A. Me.

Q. Do you have any memory of this document outside of today's deposition?

A. I don't recall this specific document. I recall the issues discussed in it.

Q. Okay. Was this document created in the regular course of business of --

A. Yes.

Q. Okay. What was the NO B.S. campaign?

A. That was another campaign that was used. As I mentioned earlier, we had several agencies helping us trying to craft the most effective way to communicate to adult smokers, and this was another campaign.

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Q. Well, is it not fair to say that the No Bull campaign was earlier conceived of as a NO B.S. campaign?

A. It was another way of saying it. I don't think one begot the other, but I think they were just two alternatives.

Q. Well, why was NO B.S. not pursued and No Bull eventually was the slogan adopted?

A. I think another agency picked up on No Bull, but we studied that issue of should we say NO B.S. or should we say No Bull, and we actually did research to assess which was the preferred way to go. I believe the agency that this was directed to, which was West Wayne, felt strongly that NO B.S. was a better communicator of the idea. There were opinions within R.J. Reynolds that NO B.S. might be a little too strong a language and that we may not need to say that, but No Bull was at the same point. And so we tested it to see in the agency was right, that NO B.S. was a much more compelling way to make the point, and as it turns out, it wasn't. So we went No Bull. But I think that there was an advertising agency working on No Bull simultaneously. There were a lot of people working on this and it was fairly hectic, and I can't really replace it all.

Q. Is B.S. an abbreviation for bullshit?

A. I believe it is. It's also used just as a

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1 generic term, and that's B.S. I mean, I think -- I don't
2 think every time you hear the word B.S. that you
3 immediately run through your mind bullshit. I think, you
4 know, he's just B.S.ing you for instance is another term
5 that's used frequently, so I just think it's a term
6 that's -- In my opinion it's another synonym for bull.
7 It's just a way to say unnecessary, superfluous things.
8 Q. Okay. Let's look at pitfall number three. And
9 the bold title of that reads "Competitive smokers resist
10 admitting that Winston is all natural and Marlboro isn't."
11 Is that referring to Marlboro as being the target brand of
12 the new Winston campaign?
13 A. It's referring to the fact that when adult
14 smokers were asked to talk about Winston and Marlboro, that
15 the idea that Winston was made from 100 tobacco, not
16 everyone believed it.
17 MR. CASSIDY: Can I have this marked as the next
18 exhibit.
19 (Exhibit #31 marked for identification.)
20 Q. Mr. Leary, looking at Exhibit #31, can you please
21 identify this?
22 A. Well there is no heading on it, so it's a memo
23 to -- Let's see. Who is Tony Sharpe? I don't know. Pete
24 Woods was with Long, Haymes and Carr, and Michael Edmeades
25 was with West Wayne. I don't recall who Tony Sharpe was.

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Q. And again the author of this document?

A. Joanne Coggins.

Q. Was this document created in the regular course of business for R.J.R. Reynolds Tobacco Company?

A. I believe it was.

Q. Okay. I want to go to the second paragraph here. It states "All other leading brands must read all other leading brands' blends. What's in Winston must read what's in Winston's blend. Keep in mind our product claim is no additives in our tobacco blend. Please be sure that make this change." What is she referring to?

A. She is referring to a product comparison ad.

Q. Why was it important for her to emphasize the word blend?

A. At some point we were apparently putting blends in the advertising.

Q. Well, I mean doesn't this document say that there was an ad that was created that said within that quote, "All other leading brands," unquote, and she was instructing your outside ad agencies to change that copy to, quote, "All other leading brands' blend" and then with respect to Winston and also note that was Winston's -- that Winston was a blend?

MR. BEACH: Objection to the form of the question, calls for speculation, Counsel's testifying, the

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1 document speaks for itself.

2 Q. Was she sending -- This was being sent to your

3 outside ad agencies, correct?

4 A. Yes.

5 Q. And Long, Haymes and Carr is still your outside

6 ad agency on new Winston cigarettes, correct?

7 A. That's right.

8 Q. And was she not instructing them to change the

9 copy from leading brands to other leading brands' blends?

10 MR. BEACH: Same objection.

11 Q. Do you have an answer?

12 A. I think she was.

13 Q. Why was it significant for her to inform your ad

14 agencies of that change?

15 A. I'm trying to recall how this issue -- what this

16 issue was. And what is coming -- Let me -- During the

17 course of this, how we discussed it and what we thought was

18 the most accurate communication and what we thought was

19 most effective in communicating change. I mean, I can show

20 you several campaigns that spoke to it in different ways.

21 What I think was going on here is that at this

22 point and time we were actually listing additives, as it

23 says down here, beneath the list of additives. And what we

24 said when we said that was if we're going to -- when we did

25 that was if we're going to list the additives, we're going

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1 to be specific as to these additives are in the tobacco
2 blend because we thought that was clear. When we launched
3 nationally, we no longer listed the additives. And then
4 what we said was -- I believe in our product comparison ads
5 what's in other leading brands' tobacco? 94 percent
6 tobacco, 6 percent additives. And what's in Winston's
7 tobacco? 100 percent tobacco. So I think this comment was
8 specific to the advertising campaign that we were using at
9 that point and time.
10 Q. Well, you mentioned the concept of most accurate
11 communication. Is the most accurate communication in
12 reference to new Winston cigarettes to say that it has 100
13 percent tobacco blend?
14 A. I don't believe so. I think when people say 100
15 percent tobacco, is the tobacco somewhere else other than
16 the tobacco blend? I think it's apparent when you're
17 talking about the tobacco that you're talking about the
18 tobacco in the rod. So again, when we got away from
19 listing the ingredients, I think that was an issue with
20 this. I could be wrong. Our ads now say -- Well, let me
21 give you a clear example. What's in other leading brands'
22 tobacco? 94 percent tobacco, 6 percent additives. Is
23 there any difference between that and what's in other
24 leading brands' tobacco blend? 94 percent tobacco, 6
25 percent additives. So now that I walk it through in my

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1 mind, I'm pretty clear on that, that we judge to be
2 absolutely no difference. For instance, if you flip to the
3 other side, what's in Winston's tobacco? 100 percent
4 tobacco. What's the difference between that and what's in
5 Winston tobacco blend? 100 percent tobacco. So the way we
6 structure the ads now, the blend part did not bring
7 anything to the party.
8 Q. Are you saying the use of the word blend would be
9 superfluous?
10 A. I believe it is as we currently construct our
11 ads, yes. For instance, as you pointed out, is there any
12 difference between 100 percent tobacco, no additives, and
13 100 percent Tobacco blend, no additives? I don't see any
14 difference at all. We're referring to the fact that there
15 is nothing but tobacco. There's no additives in the
16 tobacco or the tobacco blend. Blend simply refers to the
17 fact that the tobacco is made up of different kinds of
18 tobacco. It's still 100 percent tobacco.
19 Q. Does not blend refer in part to the use of
20 reconstituted tobacco, but when one says 100 percent
21 tobacco there is no understanding that reconstituted
22 tobacco is part of the product?
23 A. Reconstituted tobacco is tobacco.
24 Q. What is tobacco?
25 A. Tobacco is a plant that's grown.

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Q. When one smokes a cigarette, does not one believe that they're smoking the leaf from the tobacco plant?

A. I don't know the answer to that. It's my opinion that tobacco is tobacco.

Q. Well, if you saw a product that said 100 percent tobacco, and within that product was the roots of the tobacco plant, do you think you would be smoking 100 percent tobacco?

A. I don't know.

Q. What about if the stems of that plant were included in that product?

A. I think a stem is part of tobacco.

Q. If you go down to a neighborhood grocery store and ask for fresh squeezed orange juice, would you be offended if you got the peel of the orange as part of your glass of orange juice?

A. I wouldn't be offended if pulp was in there and not just juice.

Q. What about the peel?

A. I suspect there is part peel in orange juice. I don't know. It wouldn't bother me, no.

MR. CASSIDY: Okay. I'd like to introduce this as the next exhibit.

(Exhibit #32 marked for identification.)

MR. BEACH: Do you have a copy of this for me,

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1 Counselor?

2 MR. CASSIDY: If you would like your own pack,

3 I'm sure Mr. Leary can provide you a complimentary.

4 Q. Could you please examine what's been marked as

5 Exhibit #32. Can you identify that for me?

6 A. It's a pack of Winston Ultra Lights soft pack.

7 Q. What are ultra lights?

8 A. They are a flavor category.

9 Q. And how are they distinguished from other flavor

10 categories of cigarettes?

11 A. Primarily by tar and nicotine level, and

12 therefore by taste level or flavor level.

13 Q. Does tar and nicotine affect taste?

14 A. I think the -- I believe so, yes.

15 Q. Does -- Well, let me divide that up. Does tar

16 affect taste?

17 A. Well, tar is a byproduct of smoking a cigarette

18 and pulling the smoke through a thing that captures tar.

19 But it's basically the strength level of the cigarette.

20 Q. And does the strength level of the cigarette

21 affect taste?

22 A. Yes.

23 Q. Now, back to nicotine. Does nicotine affect

24 taste?

25 A. I think it does.

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Q. Okay. How does nicotine affect taste?

A. I don't know.

Q. How does tar affect taste?

A. Tar I think is a measure of the strength level of the cigarette.

Q. Well, can you better describe to me what strength level of a cigarette means?

A. Well, when you smoke a cigarette, how much flavor does it have, how -- what is the strength.

Q. Well, what is tar?

A. Tar is a byproduct of a cigarette, when you burn a cigarette. And the way it's measured is by the federal -- I think it's the FTC method where a cigarette is lit and it is smoked through a machine and on a -- I think it's a piece of gauze of some sort tar collects, and you measure how much tar is produced by smoking a cigarette.

Q. Well, when I think of tar, I think of what's sometimes put on the top of buildings. Is that the same concept of tar that I should be thinking of with respect to cigarettes?

A. I don't think you should think about that, but you may. If that's your experience with tar, then you might well.

Q. Okay. But can you better describe to me what tar is than what you provided?

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A. No.

Q. Okay. Now, you said that is ultra light cigarettes?

A. That's right.

Q. Are there new Winston Light cigarettes?

A. Yes.

Q. And then the third category is just full flavored?

A. That's right.

Q. Okay. Based upon your knowledge of R.J.R.'s marketing research, do smokers enjoy the taste of light cigarettes as much as full flavored cigarettes?

A. I think the smoker picks the flavor category he enjoys, he or she enjoys.

Q. But there is a taste difference, right?

A. I believe there's one, yes.

Q. Okay. Can you better describe that taste difference?

A. A full flavor cigarette has more strength and more flavor than a light cigarette. A light cigarette has more strength and flavor than an ultra light cigarette. And then there's a whole other category that's Now and Carlton, which are the lowest, which have even less taste and strength.

Q. Okay. Are the prices all about the same?

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A. They are.

Q. Why would someone choose a cigarette that has a lower amount of taste than a cigarette that has a greater amount of taste if they're all roughly about the same price?

A. They like the taste better.

Q. But I thought you said with a full flavored cigarette, those have the most taste.

A. They do, but some people prefer a lighter taste. It's not unlike, to give you an example, in beer. I mean, I drink light beer. I don't like the taste of a full flavor beer. Now, it might also be that the light beer is less calories, but I like the taste of a light beer than -- I don't know what they call full flavor beer.

Q. Did you grow up drinking light beer?

A. What age are you referring to by growing up?

Q. Well, I'm not going to ask you to specify what age you had your first beer, but when you were 18 years old, were you drinking light beer then?

A. I don't know. I don't think so. I think I was drinking cheap beer then.

Q. Do you remember your impressions of your first light beer bottle?

A. I don't.

Q. Well, do light or ultra cigarettes pose any lower

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1 health risks than full flavored cigarettes?

2 A. Not to my knowledge. They all carry the same

3 warning in fact. This one has the warning about pregnant

4 women resulting in fetal injury, premature birth and low

5 birth weight.

6 Q. But is there any belief amongst consumers that

7 light cigarettes might pose less health risks than full

8 flavored cigarettes?

9 MR. BEACH: Objection, calls for speculation.

10 A. I don't know.

11 Q. Have you ever received any market research on

12 this topic?

13 A. Not to my knowledge.

14 Q. Do you have an understanding of the word

15 compensation as used with respect to cigarettes?

16 MR. BEACH: By whom?

17 Q. By anyone.

18 A. Not really.

19 Q. Have you ever heard of the word compensation

20 being used in reference to light cigarettes?

21 A. Not that I recall.

22 Q. Have you ever smoked a light cigarette?

23 A. Yes.

24 Q. Have you noticed your smoking pattern being

25 different when smoking a light cigarette than when smoking

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1 a full flavored cigarette?

2 MR. BEACH: Relevancy.

3 A. The difference I can tell between a light

4 cigarette and a full flavor cigarette is that a full flavor

5 cigarette is stronger than I like.

6 Q. Do you have any knowledge as to whether smokers

7 of light cigarettes inhale these cigarettes more deeply

8 than smokers of full flavored cigarettes?

9 A. No.

10 Q. Have you ever used or heard the term lower

11 perceived risk in reference to a type of cigarette?

12 A. No.

13 Q. Have you ever heard of a lower perceived

14 cigarette?

15 A. A lower perceived cigarette?

16 Q. I'm sorry. A lower perceived risk cigarette?

17 A. No. Not that I recall.

18 Q. Is the Eclipse cigarette regarded by R.J.R.

19 Reynolds as being a lower perceived risk cigarette?

20 MR. BEACH: Objection, asked and answered.

21 A. Not to my knowledge.

22 MR. CASSIDY: Okay. Do you want to take a five

23 minute break?

24 MR. BEACH: Yeah.

25 VIDEOGRAPHER: We're going off the record at 2:02

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p.m. This is the end of tape number six.

(There was a break taken.)

VIDEOGRAPHER: We're back on the record at 2:19 p.m. This is the beginning of tape number seven.

Q. Do you know what the term project prism refers to?

A. I've heard it.

Q. And what does it refer to?

A. It referred to a project that I believe Doug Weber headed up that was some sort of new idea project.

Q. Well, do you have any idea as to the activities of Doug Weber on the project?

A. Any idea of the what?

Q. What his -- What the project's purpose was?

A. I think it was a new ideas project, but I'm not -- I'm not real sure.

Q. Well, anything specific to characterize project prism as opposed -- aside from just being a new idea?

A. No.

Q. Was there any relationship between project prism and Winston cigarettes?

A. No.

Q. Was there ultimately any work done with respect to -- on Winston cigarettes that developed out of project prism?

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A. I think the prism project had, as part of it, the concept of a cigarette made from 100 percent tobacco, but in terms of interface with them or involvement with that project, I didn't have any.

Q. Do you have any idea as to whether project prism is still in existence?

A. I do not.

Q. Do you know whether it's been terminated?

A. I do not.

MR. CASSIDY: Please introduce this as the next exhibit.

(Exhibit #33 marked for identification.)

MR. BEACH: Wait your turn.

Q. You have been handed what's been marked as Exhibit #33, and it's entitled Product Claims Status Update. Can you identify the person stated here on the cover of this document?

A. Mike Harper.

Q. And do you know what his role is within R.J.R. Reynolds, if he is an R.J.R. Reynolds employee?

A. He wasn't an R.J. Reynolds employee.

Q. Do you know who he was?

A. He was R.J.R. Nabisco, I think he was -- He had Steve Goldstone's job.

Q. So he was the -- at one time a prior C.E.O. of

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R.J.R. Nabisco?

A. That's right.

Q. Would he have been working directly on project prism?

A. Mike Harper?

Q. Yeah.

A. I doubt it.

Q. So if this is, as it says here on the title, a Product Claims Status Update, is it reasonable to conclude that this is material that was given to Mr. Harper, but not material that Mr. Harper himself created?

A. Yes.

Q. Have you had a chance to look inside the document at all?

A. I'm just getting started.

A. Uh-huh.

Q. Why don't we go back to the beginning of the document. Having paged through this, does this trigger any fuller understanding as to what project prism was?

A. Yes.

Q. Okay. Can you please state for record what's your fuller understanding of the project?

A. It looks like a project that explored new cigarette ideas, some of them are detailed in here. There's a variety.

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Q. And could you state for the record what those new cigarette ideas are that were explored? And this is from your memory looking back now triggered in part by this document. I'm not asking you to go through the document and read each page.

MR. BEACH: Yeah. In other words, does seeing this, Ned, refresh your recollection, in other words, prior memory that you would have had? It's like seeing something that makes you remember something from the past. If it doesn't do that, that's a different question.

A. I've never seen this document before, however, there are some projects in here that over the course of my career I worked with the concept that was within this.

Q. Okay. Can you provide any better explanation than --

A. Well there's one in here where he mentions a project that I worked on called -- I believe I saw -- EW.

Q. And what does project EW refer to?

A. That was a -- I believe it was a filter technology that we used -- we launched on Select that was introduced as a Select flavor filter.

Q. And what were the characteristics of that filter?

A. Well, as I recall, it the filter reduced some -- It was alleged to introduce some of the controversial compounds found in cigarette smoke, it also reduced

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1 harshness and made the cigarette taste smoother, which is
2 the area that we launched in the test market I think in
3 Oklahoma City --
4 Q. Okay.
5 A. -- called a Select flavor filter.
6 Q. Was that ever -- Was that filter ever put on to
7 cigarettes for Winston Select that were distributed
8 nationally?
9 A. No.
10 Q. But it was introduced in to the Oklahoma test
11 market?
12 A. I think it was Oklahoma. I may be mistaken in
13 that. I think it was Oklahoma. I'm pretty sure.
14 Q. Okay. What are the controversial compounds found
15 in cigarettes that project EW was designed to reduce?
16 A. I really can't recall exactly what the compounds
17 were. I mean, I think as he has it here, it was 50 percent
18 less controversial compounds. I know I was in a meeting or
19 two in which those compounds were discussed, but I can't
20 recall them.
21 Q. Well, maybe you can't give me an exhaustive list,
22 but does anything come to mind?
23 A. Gosh. I really can't remember exactly what it
24 did. You're into the scientific area, and I was exposed to
25 it a couple of times. I think it used something called a

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1 carbon scrubber filter, and somehow these compounds
2 attached to the carbon in the filter, but I'd simply just
3 be speaking words that I've heard before if I tried to
4 speak to exactly what it reduced. I don't recall.
5 Q. Okay. And I'm not asking you exactly what it
6 reduced, I'm just asking you if any particular chemicals,
7 names, come to mind?
8 A. I can't recall. I'm sure there are documents
9 that speak to it, but -- If you had any, I could -- it
10 might refresh my memory, but that was -- When did we launch
11 that? I don't know. It was three or four years ago
12 probably, and I can't recall the exact -- The other point
13 is the marketing of that product was focused on the Select
14 flavor filter. I think it said removes harshness so the
15 flavor comes through, or something to that effect, so we
16 weren't really working hard in that area of the
17 controversial compounds in terms of speaking about it.
18 Q. Was there anyone from the marketing side that was
19 in charge of project EW?
20 A. Me.
21 Q. Okay. Is there any assistant that you had that
22 was particularly working on the Oklahoma or whatever city
23 test market that --
24 A. I think Jackson Roper was helping me on that.
25 Q. Okay. And who was your liaison in R and D on

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1 this project, if there was one?

2 A. I think it was Denny Potter.

3 Q. Okay. In the test marketing of project EW, and

4 specifically with the marketing material for it, was there

5 any reference to the claim that this reduced 50 percent --

6 I'm sorry -- reduced some of the controversial compounds

7 found in cigarette smoke?

8 A. I don't believe so.

9 Q. So is it fair to say then that the consumer was

10 not informed as to that aspect of the filter technology

11 that was incorporated in the Winston Select?

12 A. The adult smokers in the test market were

13 informed of what that cigarette did that we could

14 substantiate.

15 Q. And was that with reference to harshness and

16 taste?

17 A. It was a smoother product, that's correct.

18 Q. But the consumer was -- the adult smoking

19 consumer was not informed as to the aspect with respect to

20 controversial compounds?

21 A. There was no reference made to that. Let me just

22 speak in general what I know about that area. I haven't

23 been intimately involved with it, but in general, we make

24 claims that we feel confident we can substantiate. To my

25 knowledge, and again this is a peripheral understanding of

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1 a lot of different types of cigarettes, there is no way to
2 substantiate without significant long-term studies whether
3 one cigarette is any safer or -- than another. As a
4 result, we make claims only that we feel comfortable that
5 we can substantiate, and that's why going out with
6 something that said 50 percent less controversial compounds
7 would not be something we could do because the clear
8 implication of that is that there are less of those
9 compounds, then it must do something X, Y, and Z and we
10 can't make any claims to that in that regard. That's my
11 recollection of how we handled EW.
12 Q. I mean, people might think in their minds that
13 this was a safer cigarette than others sold on the market?
14 A. They could, and we did not have a substantiation
15 of that.
16 Q. But did you have an understanding from the
17 meetings that had you on project EW that the particular
18 filter that was being used was reducing by a certain
19 percentage that could be calculated some of the
20 controversial compounds found in the cigarettes?
21 A. That's what the scientists at R and D told me,
22 yes.
23 Q. Why don't we go to bates number 5468 in the upper
24 right-hand, and at the top it says summary of
25 recommendations.

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A. Yes.

Q. Number one it says "Pursue introduction of CC within existing Winston/Camel product line (EW)." Is the EW referring to what we were just speaking of?

A. Yes.

Q. Okay. What is CC?

A. I'm trying to recall. And I don't remember what those letters stood for. Maybe it's in here. CC? I do recall that, but I can't -- Let's see here. Apparently he's using that to refer to controversial compounds it looks like.

Q. Okay. That was going to be my next question. And then at number -- point three it says project TS.

A. That's teeth stain it looks like, if I'm reading this correctly.

Q. Now, let's go to bates number 5475. Is this a graph showing different claims and their degree of appeal amongst individuals questioned?

MR. BEACH: Objection, calls for speculation.

Q. Well, do you have an understanding as to what this graph shows?

MR. BEACH: The witness testified he has never seen this document before, Counselor.

MR. CASSIDY: Counsel, you are coaching the witness?

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MR. BEACH: No, I'm just reminding you what his testimony is. You're asking him questions inconsistent with his testimony.

MR. CASSIDY: Okay. Let's just have the witness answer the question if he can.

A. This -- On the left it looks like he's written 72 PI Top Box. I assume this is some measure of purchase intent, which is what usually PI stands for. And it looks like he's ranked these according to purchase intent.

Q. So I mean -- Is the one way -- Should this be interpreted, and correct me if I'm wrong, that persons were asked what your purchase intent would be if a product was claimed to have 50 percent less causing -- less cancer causing compounds?

A. Could be.

Q. Okay. And then the next one was what would your purchase intent be if a cigarette was claimed to have 50 percent less secondhand smoke?

A. Yeah.

Q. And then this measures, you know, what their response would be to each one of these questions?

A. Uh-huh.

Q. Now, in reading this chart, was the highest rated response -- Or can you identify what the highest rated response was?

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A. It looks like 50 percent less cancer causing compounds.

Q. Do you have any idea as to what are cancer causing compounds?

A. Carcinogens.

Q. And do you have any idea as to what specific carcinogens are found in cigarettes?

MR. BEACH: Objection as to the form of the question, it's outside this witness' scope of expertise.

A. I can throw out words I've heard, but I don't know their role or anything.

Q. I understand you're not a research scientist, but I'll request you to throw out those words.

A. I've heard of nitrocymines, benzopyrene.

Q. What are nitrocimines?

A. Beats me.

Q. But they are found within the tobacco plant; is that your understanding?

A. I do not know. You asked me what are some terms that refer to controversial compounds in cigarettes, and I believe they are found in cigarette smoke, which is just evidence that I'm in an area that I'm not familiar with.

Q. Okay. Looking at the claims here in terms of their hierarchy of ranking, what were some of the claims that did the poorest? Maybe if you read the bottom three.

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A. Contains no stems, redefines smoothness, fuller taste.

Q. Would a reasonable interpretation of this chart be that people are more interested, or at least the people that were tested, in a cigarette that addresses health issues than a cigarette that addresses taste?

MR. BEACH: Objection, calls for speculation.

A. Without more knowledge of how he conducted this, I mean, this is a ranking, but I don't know the context of who he talked to, how he asked the questions, anything in that regard. So it's hard to say. He would be the one to ask about this.

Q. And the who and he, who are you referring to?

A. What types of adult smokers? Did they have a predisposition to a certain concept? And the he is Doug Weber.

Q. But the recipient or the audience of this particular document was Mr. Harper?

A. That's right. That's what it looks like. His name is typed on the front with a date, so I assume that it was given to him on that date.

Q. Okay. Now, I'm looking under five, hypothesize, and the second point there states "natural is growing theme across food category and perceived product with cigarettes."

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A. Uh-huh.

Q. And actually it's p-r- -- I'm not sure, but I think that's an abbreviation for product.

MR. BEACH: Or problem.

Q. Or problem. Okay. Yeah. Would you give me an understanding as to what the abbreviation of the word after perceived might be?

A. That could be product or problem.

Q. Okay. Was this statement here one of the factors that influenced the ultimate production of new Winston cigarettes?

A. No. Excuse me. Which factor?

Q. The idea I guess. My question is not precise. Is the theme or the desire for natural, was that one of the influences that ultimately resulted in R.J.R. Reynolds issuing or launching the new Winston cigarette?

A. The way the Winston proposition came about again was the No Bull proposition with the No Bull attitude and the straight-up, 100 percent tobacco cigarette. It started from ground zero and went out to adult smokers to get impressions of whether that was an appealing idea. And this information here, while it may have been available at the time and it may well have been circulated at the time, and I may well have seen something like this, I don't recall this presentation, the real question on the Winston

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1 proposition was is the idea of Winston becoming a No Bull
2 brand, supported by 100 percent tobacco cigarette, will
3 that sell to adult smokers. So it wasn't like to just --
4 If I can, just for a second --
5 Q. Sure.
6 A. -- try and understand where you're trying to go,
7 that someone came along and said (knocks on table) all
8 natural cigarettes are a growing phenomenon, you might want
9 to do something like that with Winston. It didn't happen
10 that way. It started with a core idea and an attitude of
11 No Bull, which if you just think about it on its face, is
12 different than natural, granola, Birkenstock. It's more of
13 an authentic, straight-up, what you see is what you get
14 type brand. I hope that helped.
15 Q. Yeah. And should my understanding then be that
16 in conceiving the new Winston cigarette that it was more of
17 a marketing idea, and out of that marketing idea you looked
18 for a way to actually change the product that would then
19 support the marketing idea, and then introduce the product
20 and the marketing idea?
21 A. The nail on the head right there exactly. And
22 the reason is, just to give you more insight, a product
23 idea alone we did not believe was sufficient to improve the
24 position of Winston in the marketplace. It needed a
25 compelling attitude among adult smokers. If you look at

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the competition for Winston and who has succeeded, to a great deal Marlboro has succeeded because it had a very compelling attitude and image combined with a good product.

Q. Okay. Thank you.

MR. CASSIDY: If you will mark this as the next exhibit, please.

(Exhibit #34 marked for identification.)

Q. There's a lot of pages to this exhibit which is marked as #34, but I'm wondering if just paging through it you recognize ever having seen such document before?

A. I do not. I don't recall it.

Q. Well, does -- In examining this document, is there any way for you to tell me what department this might have come out with R.J.R. Reynolds, or possibly even the author? And I'll note that that's not a trick question. I don't see an author listed here.

A. I don't know. And by the way, I may have seen a graph similar to the one that you showed previously where -- that included 100 percent tobacco on a graph, but I don't recall ever seeing this particular document.

Q. Okay. Well, let's -- I just want to go to one page here. Let's go in to 8253. It's probably two-thirds of the --

A. I got it.

Q. Okay. Great. In looking at this page, does this

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have any relation to the new Winston cigarette?

A. The fact that there is a cigarette mentioned here that mentions no additives, that's consistent with what we did with Winston, but in terms of this page driving it or me recalling this page, I do not.

Q. Well, is this giving information on product claims and their popularity by looking at the word index over on the left?

A. It may. I do not know.

MR. BEACH: Does the witness need to take time and review the entire document?

MR. CASSIDY: I'm not going to spend more time on this document. Let's mark this one.

(Exhibit #35 marked for identification.)

MR. CASSIDY: Counsel, the copy of this document I have for you is missing the final page in the copy. I'm not going to ask any questions about the final page however.

Q. Could please take a look at what's been marked as Exhibit #35?

A. I'm sorry. What was the question.

Q. Could you just take a look at the document.

(Witness complied.)

Q. Have you had a chance to review this document?

A. I've glanced at it.

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Q. Okay. Exhibit #35 is dated on page 3 of it as December the 22nd, 1994. In glancing at this document now, do you have any memory of ever receiving this document?

A. Not really.

Q. Do you see your name on the cover page on the distributions list?

A. Yes, I do.

Q. Okay. Can you tell for me who D.H. Murphy is?

A. Dan Murphy.

Q. Is he an R.J.R. Reynolds employee?

A. Was.

Q. And was he an employee of R.J.R. Reynolds at the time that this document was written?

A. I suspect.

Q. Okay. Just looking at the distribution list, if I was to use the word brain trust with respect to R.J.R. Reynolds, does this list the brain trust of R.J.R. Reynolds, I mean all the people that are here?

A. I would not use that term to describe whatever is here, seventy-five people.

Q. But aren't these the leading people within the company?

A. Some are, some aren't. I mean, no, I would not use this to describe it as the brain trust.

Q. Well, your current boss is listed here, correct,

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Ms. Beasley?

A. Except for that one. Yeah. Let's see. Where is she? Beasley. Yeah, she's there.

Q. And the person who's running --

A. And I'm here.

Q. And the person's who's running Camel?

A. Not part of the brain trust. Yes, I think they're there too.

Q. And Mr. Iauco is there?

A. Yeah.

Q. Okay. And he's the senior person with the company currently?

A. Yes.

Q. Okay. And Mr. Pennell is listed?

A. Yeah.

Q. And he's in charge of sports division?

A. Uh-huh.

Q. If we go to the next page, Mr. Shouse?

A. Shouse, yes.

Q. And he's running Doral and the savings brand?

A. That's right.

Q. And then we have Mr. Weber listed also?

A. Uh-huh.

Q. And he's head of market research?

A. He is now.

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Q. If we go to the next page it lists as -- in terms of -- I believe these were identified as sessions, one is external affairs. Did you ever attend any of the sessions that are listed here?

MR. BEACH: I am sorry. What page are you on?

MR. CASSIDY: I'm on -- It's got a Mezzina/Brown number, the last two digits are 54.

A. I may have.

Q. Do you have any memory of attending the external affairs session?

A. See, I think that's referring to when those departments were going to see the report as opposed to -- so if I went, I went in the marketing sales session workshop.

Q. Okay. So is different groups within the company meeting on the same day?

A. You know, I don't really know how he had this organized when he had this meeting. It appears he grouped marketing together, R and D together, and then held with them. I'm not real sure.

Q. Okay. Well, do you have a memory though of attending any, what's labeled here, future trend workshop?

A. I have been to various or occasional meetings where discussions of stuff like this took place, but --

Q. And what's stuff like this mean?

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A. Future trends.

Q. What's happening in society down the road?

A. Uh-huh.

Q. What's happening or what's expected to happen to the cigarette industry down the road?

A. I don't recall as many of that as I do just where the trends in consumers and adult smokers are going in the future.

Q. Okay. Was this document created in the regular course of business for R.J.R. Reynolds Tobacco Company?

A. I suspect it was.

Q. Okay. Let's go onto what has the bates number of 55; that's the next page.

A. Uh-huh.

Q. And I'm looking under the first -- at the top, the first bullet point. It says "People feel emotionally isolated, because relationships are troubled, breaking down and fragmented." Was that one of the trends that was discussed at this point and time in R.J.R. Reynolds?

A. It appears to be something that was discussed as part of this project.

Q. Well, just using this as the keystone, I mean has that topic been discussed within the marketing department of R.J.R. Reynolds in the mid 1990s?

A. It appears that it was discussed as part of this,

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1 along with indulgence, recognition, individuality. I mean,
2 that's the way my recollection of these things go is that
3 there's an attempt by someone to identify general trends in
4 consumer issues, and this apparently was one of them. If
5 you're asking me did I hear a great deal of discussion
6 about people feeling emotionally -- or adult smokers
7 feeling emotionally isolated as this goes on, no.
8 Q. Okay. Well, let's go to bates number -- it's 56,
9 the last two numbers. And I'm looking under R.J.R.
10 Reynolds applications in the middle under company, and the
11 first bullet point says "Restore belief that smokers smoke
12 for pleasure" in parentheses "(e.g., American Spirit
13 campaign)." Has R.J.R. Reynolds attempted to, in its
14 marketing efforts, quote, "restore the belief that smokers
15 smoke for pleasure," unquote?
16 A. I'm unaware of any campaigns that attempted to do
17 that, but then again, I'm not sure what he means there or
18 what is the American Spirit campaign.
19 Q. Well, is that referring to American Spirit
20 cigarettes?
21 A. I'm unaware that American Spirit had a campaign,
22 and that refers to an advertising campaign in 1994.
23 Q. Well, okay. Let's go to the very bottom.
24 "Market brands around pleasure, not just moderation since,"
25 I'm going to translate that into greater than, "70% of

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volume is in non-moderation products." What's a non-moderation product?

A. I'm not sure what he's referring to there unless -- I'm not sure what he's referring to there. There was at one time like a category of products, I think we categorized them as moderation, and I think Vantage and Merit and those fell in it that were advertised primarily as a low-tar brand, but I'm not sure what he means there. He could be talking about all products.

Q. Well, would a moderation product possibly include the ultra lights?

A. I don't know.

Q. Okay. I want to look at the next page which at the top says "Indulgence - continued," and underneath Winston it has as one of the topics "Cigarette as "friend" given smoking ritual. Count on Winston (as your friend in changing world)." Has R.J.R. Reynolds ever attempted to create the idea that the cigarette was your friend?

A. Not to my knowledge.

Q. Has R.J.R. Reynolds ever discussed the idea of marketing a cigarette as one's friend to a smoker?

A. Well, what I would say is I took over and was in charge of Winston beginning in August of '93, this was written in December of 1994, a-year-and-a-half later, and I have never, beginning in August of '93 to today, ever

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1 considered or heard discussion of creating something that
2 implied that Winston was your friend for adult smokers.
3 Q. Okay.
4 MR. BEACH: Let's mark this as the next exhibit.
5 (Exhibit #36 marked for identification.)
6 Q. And Mr. Leary, could please take a look through
7 this exhibit?
8 A. Okay.
9 Q. Okay. Can you identify for me who David E.
10 Townsend is, as listed on the cover of this exhibit?
11 A. He works at R and D.
12 Q. Is he a senior person at R and D?
13 A. I think he's a vice president.
14 Q. Okay. And there's a notation here and it says,
15 "Doug, please review before the 4/27/95 meeting." Do you
16 have any idea as to whose handwriting that might be?
17 A. No.
18 Q. Okay. Was Doug Weber at the time in charge of
19 marketing back in '95?
20 A. He's never been in charge of marketing.
21 Q. I'm sorry. Market research.
22 A. I do not know when he took over marketing
23 research. I can't recall.
24 Q. Okay. I just want to make one cross-reference to
25 our preceding exhibit, Exhibit #35, and specifically page

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56, and this is on the page that says "Indulgence" at the top, and then under R.J.R. applications the first bullet point was "Restore belief that smokers smoke for pleasure." What is the title of Exhibit #36?

A. Pleasure Cigarette Meeting.

Q. Having reviewed this document, do you have any memory as to whether you attended any meetings on the topic of -- that's described on this cover as pleasure cigarette?

A. I do not.

Q. Well, let's go into the document then. Let's go to 61, the second page. And the second bullet point says "Point of difference." I believe you have used that term in the last two days. What does that refer to?

A. That refers to -- Most of the time I refer to it as a product point of difference, which means Winston versus Marlboro, is there any difference between those two products? And it's -- All products I think are -- Well, cigarettes as we're talking today, if you can differentiate yourself among adult smokers on both an attitudinal side as well as a product point of difference side, then your -- one objective is to set yourself apart from the competition if you hope to gain more business among adult smokers.

Q. On the attitudinal side is one of the points of difference that you're trying to advance with new Winston cigarettes is pleasure?

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A. We don't use -- I think the real answer to that is no. I mean smoking is a pleasurable activity for adult smokers. The real thing we're trying to advance is No Bull. If you look through all the -- when we've talked about, it's always about No Bull and not about pleasure.

Q. Okay. Well, let's go on then to 3372. Can you identify what the title is of this page?

A. It says "No Crap In Blend."

Q. Do you have any idea as to what this might have been referring to?

A. Not a clue. I mean, I can read other places. I mean, I've never seen this document. I've never heard those words. Apparently it came out of this meeting, but -- I mean, this goes down to say "less fire cone drop out," "better taste," "firmer product." I don't know.

Q. Sure. Let me go through some of these. What's fire cone drop out?

A. It's when the fire cone falls off the end of the cigarette.

Q. I'm not a smoker and maybe --

A. When you light a cigarette, there's a portion of the tobacco that burns, but it smolders, and that ash moves down the cigarette, and until you put it out, there's a smoldering group of tobacco right there. That's what burns down the cigarette. And this is referring to that dropping

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1 off the cigarette.

2 Q. If we go up a little bit, "Better Q," does that

3 stand for quality?

4 A. Could.

5 Q. Well, do you have any --

6 A. Not a clue what they meant when they wrote this.

7 Q. Did you ever abbreviate quality as Q in any other

8 documents?

9 A. I can't recall ever having done that.

10 Q. Okay. Would you have any guess as to what that

11 might be aside from quality?

12 A. I would not.

13 Q. Okay. Looking at these qualities that are listed

14 here as the likes, are there any that are not present in

15 the new Winston cigarette?

16 A. I don't know that we have better ash. I don't

17 know that we have better quality. We have better taste,

18 that's a perceptual area. I think some think we have

19 better taste. I don't know that we have less fire cone

20 drop out. I don't know that we have firmer product.

21 Q. Wasn't one of the criticisms of Winston -- Well,

22 wasn't there a perception, at least within the company,

23 that you weren't producing as quality of product with the

24 nonWinston Select, you know, back in prior to the new

25 Winston cigarette being introduced?

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A. Among adult smokers who do not smoke Winston, yes. To the five-and-a-half percent of the adult smokers that smoke Winston, they liked it just fine.

Q. But wasn't quality one of the aspects that were sought to be improved, or at least the perception of, with the new Winston cigarette?

A. I think adult smokers, particularly those who did not smoke Winston before, liked the taste of that better, but that was never any intent or communication efforts directed at developing a higher quality product. I mean, you'd always rather have a higher quality product, but it wasn't -- if you're asking me about the new Winston, if you're asking wasn't quality of the objectives of this? No, it was about No Bull and 100 percent tobacco.

Q. Those might be the overriding objectives, but wasn't there discussion within the company that you were not spending enough money and cutting costs too much with respect to Winston and that you needed to improve the quality of the cigarette?

A. There have been discussions over time about that. In fact, there was an entire project done I think in the either late '80s or early '90s that I think had quality in its name, the Winston quality initiative where they undertook thirty or forty different steps to improve the quality of Winston. So at one point and time that was

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1 going on. When I picked up Winston and what I was trying
2 to do, quality was not on my radar screen that the problem
3 with Winston is we need to improve the quality, it was we
4 need a positioning for Winston. That's where No Bull came
5 from.
6 Q. Okay. But --
7 A. But you would you always just as soon have a
8 higher quality product, and that goes without saying.
9 Q. But you -- But that's not always actually carried
10 out, is it?
11 A. No, sometimes you do, and sometimes you don't.
12 Q. Okay. If I was to say characteristics of the No
13 Bull campaign are that its simple, straightforward,
14 understandable, and meaningful, would you disagree with me?
15 A. If the point you're trying to make, given I've
16 never seen this document nor this, that here is the
17 blueprint for the new Winston, that's not the case because
18 this is not a document I would have written. I never would
19 have used those words. I included simple and
20 understandable rather than straightforward -- really
21 simple, understanding, and meaningful. Any campaign for
22 cigarettes for adult smokers, if it's too complicated or it
23 doesn't mean anything, you're going to be -- you're going
24 to have a problem. The main word I see here that I could
25 look at and say that is what this Winston is is

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1 straightforward.

2 Q. I think you're trying to answer my follow-up

3 question as opposed to the actual question I asked you.

4 A. I apologize.

5 Q. Is it fair to say that within the concepts of No

6 Bull are that No Bull is simple, straightforward,

7 understandable, and meaningful?

8 A. Here's the way I would answer that question. Are

9 there -- If it were -- Are there any things on here that

10 you think are particularly similar and fit like a glove

11 with No Bull, I would say straightforward. Regardless of

12 the positioning, I would want the advertising to be simple,

13 understandable, and meaningful. So I mean, yeah, as we set

14 out, one thing is what is the message? But it's possible

15 to say that the message or the attitude is straightforward.

16 It's not possible to say the attitude is understandable.

17 That's a technique when you develop the communication, make

18 sure adult smokers understand it.

19 Q. Well, why don't we go over to concerns. And what

20 is the final concern that's listed there?

21 A. It says health message, question mark.

22 Q. Do you have any idea as to what that could be

23 referring to?

24 A. It apparently refers to a concern for the idea

25 that they were working on here. I don't know.

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Q. Is it reasonable to say that no crap in blend cigarette might imply that it was a healthier cigarette?

MR. BEACH: Objection, calls for speculation. You can answer.

A. I think that if you were to go out with a cigarette idea that said every other cigarette but this one has crap in it, then I think you are making a statement that is speaking to the stuff in other cigarettes in such a manner that if you are successful, yes, you're going to lead some to believe that crap's not a good thing.

Q. Okay. Let's continue on to 3377. And the title of this page is identified as "Communication" hyphen "Amstel Light." Do you have any idea as to what Amstel Light is referring to?

A. I think that's a beer.

Q. And what are the characteristics of Amstel Light beer?

A. It's imported, comes in a brown bottle, tastes good.

Q. Is it fair to say that when it was introduced, it was the best tasting light beer on the market?

A. I have no idea whether it was the best tasting light beer on the market. That's the good question.

Q. Have you ever had an Amstel Light?

A. Yes.

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Q. Do you enjoy the taste?

A. I've liked it when I've had it, yes.

Q. Well, you say you drink light beer, correct?

A. Yes.

Q. What light beer brand do you drink?

A. Coors Light. But I've had Amstel Light, it's a good beer.

Q. But the characteristics of Amstel Light is it's a light beer, but it tastes good, correct?

A. I believe so.

Q. Okay. Have you ever discussed the concepts of an Amstel Light cigarette or heard discussion of?

A. I don't recall it. I don't know what that would be.

Q. Well, have you ever discussed or heard discussion of a weekend cigarette?

A. I have heard discussion of cigarettes that may be for special occasions, similar to something like in a cigar-type fashion, but I've never heard any serious consideration of it.

Q. What type of special occasions would such a cigarette be for?

A. I do not know, which is why I don't think the idea is being pursued.

Q. Well, has R.J.R. Reynolds ever sought to research

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1 whether a marketing campaign based upon like sex, love
2 cigarette would be successful?
3 MR. BEACH: Objection, lack of foundation.
4 A. Not to my knowledge.
5 Q. Let's go on to page 3381. Can you please
6 identify the title of this page?
7 A. "Lower Perceived Risk."
8 Q. Does looking at this title trigger in your mind
9 any memory as to whether you have heard or seen the phrase
10 lower perceived risk used in reference to cigarettes as an
11 employee of R.J.R. Reynolds?
12 A. I don't recall.
13 Q. Has anyone ever mentioned whether the Eclipse
14 cigarette would fall within a category known as lower
15 perceived risk cigarette?
16 A. I know that Eclipse heats rather than burns
17 tobacco, and my understanding is that one of the issues
18 with conventional cigarettes is the burning of tobacco. So
19 I don't know if that's where an issue rises, Eclipse may
20 fall in that camp, but I'm not involved in Eclipse and
21 really couldn't speak to it.
22 Q. Well, when you burn tobacco, what's the
23 byproduct?
24 A. Smoke.
25 Q. And when you heat tobacco as opposed to burning

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it, is there as much smoke produced as compared to when you burn it?

A. I don't think so, but again you're into an area that -- I've never worked on Eclipse or Premier, so.

Q. Okay. Well, have you ever had any consideration or seen any data as to whether a so-called lower perceived risk cigarette, as identified here under like number one, quote, fits today's market?

MR. BEACH: Objection, compound.

A. No.

Q. Okay. Or fits consumer needs?

A. No.

Q. Okay. Have you, as an employee, ever heard or seen in a document the words lawyerized?

A. I don't believe I have. I have seen the word lawyer, but I don't know that I have ever seen lawyerized.

Q. Would you have any understanding, looking at this document and seeing the word lawyerized used in the context of what's here, as to what the meaning of the word lawyerized would be?

A. No.

Q. Let's go to 3385.

A. Uh-huh.

Q. Okay. The title of this page is "Humor."

MR. BEACH: Dot, dot, dot.

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MR. CASSIDY: Thank you.

Q. Can you give me an idea as to what they might be talking about here?

A. No.

Q. Well, is it possible that it's involving the use of humor in cigarette marketing?

MR. BEACH: Objection, calls for speculation.

Q. Would that be a reasonable estimate, or would that be too speculative?

A. I think it says humor. I mean, your question was --

Q. In terms of cigarette marketing.

A. It says humor. I was not part of this or know what the purpose is, but it appears to be some sort of brain-storming document, and I wasn't a part of it I don't believe, and this is about humor.

Q. Okay. Well, -- And then it has here under likes "irreverent," and "eye catching," correct?

A. Uh-huh. Yes.

Q. Would those be two adjectives you'd use to describe the new Winston cigarette campaign, at least with respect to some advertisements?

A. In respect to some, yes.

Q. Okay. How about with respect to the Camel mighty tasty campaign?

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A. Some could interpret that as -- I would say they're eye catching.

Q. Okay. Have you ever heard or used or seen a document with the term or the word riskier with respect to concerns on marketing?

MR. BEACH: Can you repeat that?

COURT REPORTER: Uh-huh.

MR. CASSIDY: I can repeat that.

Q. Have you ever heard or seen the word riskier ever used with respect to any marketing activity by R.J.R. Reynolds?

A. I may have seen the word riskier as referring to some strategy or another.

Q. Okay.

MR. CASSIDY: Please mark this as the next exhibit.

(Exhibit #37 marked for identification.)

Q. Mr. Leary, why don't you take a look at what's been marked as Exhibit #37.

A. Uh-huh. Yes.

Q. Have you ever seen this document before?

A. I think I have.

Q. Would you be able to state to me who the author of this document might be?

A. I think this is a document that my -- that my

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boss put together.

Q. Ms. Beasley?

A. Uh-huh. Yes.

Q. And do you remember when you saw this document?

A. Well, the date up here is May 10th, 1995, so probably somewhere in that time.

Q. Okay. Would it be fair to say or not fair to say, that Ms. Beasley, amongst her other -- amongst her talents, would be as a numbers cruncher?

A. I think she's fairly good with numbers.

Q. Okay. Would you say you're fairly good with numbers?

A. I'm okay with numbers. We've already covered my math skills.

Q. Okay. Do you think this accurately traces in a summation form the history between Winston and Marlboro?

A. Yes.

Q. Was this document created in the regular course of business for R.J.R. Reynolds?

A. Yes.

Q. Looking at the performance summary, the third bullet refers -- well, the fourth bullet refers to quitting hyphen, aging accounted for a .3 loss per year. What is that talking about?

A. People quitting smoking or aging out of the

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1 franchise.

2 Q. Does R.J.R. Reynolds study the number of people

3 that quit smoking its brands?

4 A. Not to my knowledge.

5 Q. Well, how then could she come up with a specific

6 numerical figure for this point?

7 A. I'm not sure how this figure was derived. I'm

8 not sure.

9 Q. Well, have you ever known Ms. Beasley to just put

10 speculative numbers into documents that she distributes?

11 A. No. We don't have a study on quitting. I mean,

12 there are studies published. I mean, we've talked several

13 times during the past two days that 45 million Americans

14 have quit smoking. I suspect it's possible to get what

15 percent of people that smoke quit, and I assume that's how

16 that number was put together.

17 Q. And not only what percent of people that quit

18 smoking, but which percentage of people that quit smoking a

19 particular brand of cigarettes, correct?

20 A. I don't know about that.

21 Q. Well, is not this statistic specific to Winston

22 cigarettes?

23 MR. BEACH: The document speaks for itself,

24 Counsel.

25 MR. CASSIDY: No, Counsel, --

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A. I really don't -- I really don't know. I've seen this document. I've seen that figure. I'm trying to recollect how we get at what percent of Winston's decline is attributable to quitting and aging, and I'm just not sure. That's something that I'd have to go research into how did we get that. I haven't dealt with this information in quite some time, but I'm sure we could find out. I don't know.

Q. Presumably Ms. Beasley knows, correct?

A. She may have a better understanding of how we get at that figure than I do. I don't know.

Q. Do you think there's other people that work for R.J.R. Reynolds that would have an understanding besides Ms. Beasley?

A. Doug Weber may be able to explain that.

Q. You've never examined the rate at which people quit smoking the Winston cigarettes?

A. No, never.

Q. Have you ever examined the rate at which people age with reference to the Winston cigarette?

A. No.

Q. But you do have an understanding as to what aging means?

A. Uh-huh.

Q. And again, could you please state what that is?

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A. Well, I think the combination of quitting and aging are those that either quit smoking or age out of the franchise.

Q. Okay. What does age out of the franchise mean?

A. I don't know. I guess either quit or die.

Q. Does R.J.R. Reynolds keep statistics on the number of people that smoke a particular brand and then die?

A. No.

Q. Does R.J.R. Reynolds have access to any statistics on the number of people that smoke a particular brand and then die?

A. No.

Q. Well, how would she be able to come up with a number for aging then and state it in a memo if she did not have either the statistics herself or access to them?

MR. BEACH: Objection, argumentative.

Q. Well, do you have any basis for -- Do you have any understanding as to how she formulated a number that incorporated the concept of aging?

MR. BEACH: Objection, asked and answered.

Q. Before we were talking about quitting, now we're talking about aging.

A. I do not know how this was compiled. Someone like Doug Weber could probably do it, but I suspect, and

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1 I'm speculating, that it's possible to apply normal
2 population data to the percent of the population that
3 smokes, the percent of the smoking population that smokes
4 Winston, and come up with a fairly good estimate of what
5 percent quit and what percent die. But the best way to get
6 that answer is to ask somebody like a Doug Weber.
7 Q. Okay. Fair enough. But given the model that you
8 have just described to me, wouldn't there be a basic flaw,
9 and that is you wouldn't want to look at the death rate of
10 the overall population, you'd want to look at the death
11 rate of the adult smoking population?
12 A. Here again, I said I did not know. That was
13 purely speculative on how you might can get at it. The
14 best thing to do would be to ask somebody that has compiled
15 that type information.
16 MR. BEACH: Please don't argue with the witness,
17 Counsel.
18 Q. Okay. Let's take a look at this second chart.
19 I'm sorry. The first chart on base Winston.
20 A. Uh-huh. Yes.
21 Q. Now, I asked you yesterday if you ever -- Well,
22 let me rephrase this. We talked about the phrase dying
23 cigarette yesterday, and I believe you said that you were
24 not aware of ever having heard of that used. I'm going to
25 ask you that again today. Have you ever heard the phrase

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1 dying cigarette or dying cigarette brand?

2 A. I've heard the phrase the product life cycle, and

3 a dying brand or brand that's declining. All those terms I

4 think could be used to describe a brand that's declining

5 for a significant period of time.

6 Q. Well, was there ever a discussion as to whether

7 Winston was a dying cigarette brand?

8 A. May have been.

9 Q. Okay. Are you -- Looking at this chart now, does

10 that trigger in your mind any memory as to whether you have

11 either seen or heard that term before?

12 A. I don't dispute that maybe it's a -- it could be

13 described as a dying brand for a number of years.

14 Q. Okay. Now, if we go to Marlboro however, we see

15 a whole different picture, correct?

16 A. That's correct.

17 Q. And this goes up to I believe 1994. If this data

18 was extended to 1998 it would be above the thirty line,

19 correct?

20 A. That's correct.

21 Q. Okay. Let's go the next page, which relates to

22 Winston image/product.

23 A. Uh-huh.

24 Q. I'm going to look at weaknesses. And the first

25 one is older, and the third one is older smokers. What's

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1 the difference between older smokers and older?

2 A. Could have been referring to the fact that it is

3 an older image.

4 Q. Okay. What's the problem with older smokers?

5 A. Well, as we have discussed before, it's important

6 to have a franchise that's represented across the full

7 spectrum of adult smokers, and Winston is skewed heavily to

8 the older smokers.

9 Q. Well, is one of the problems also as identified

10 here that there's a high quitting rate with older smokers?

11 A. Could be. I'm not familiar with that.

12 Q. Well, do you think Ms. Beasley would have put it

13 in a document if it wasn't actually a phenomenon of older

14 smokers?

15 MR. BEACH: Objection, argumentative.

16 A. I don't know. I don't think she would

17 misrepresent anything.

18 Q. Well, have you ever heard any discussion as to

19 the quitting rate of smokers based upon age?

20 A. I don't think I have. I mean, I've heard a lot

21 of discussion about propensity to switch to a savings brand

22 as smokers age. But there's no secret to the fact that one

23 of our concerns is that -- was the fact and continues to be

24 the fact that Winston's franchise of adult smokers is

25 highly skewed to an older age group and did not have a very

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1 balanced profile. One of the objectives we wanted to do
2 was to create a new Winston that would be interesting to a
3 greater range of adult smokers.
4 Q. But was one of the specific reasons why you
5 wanted to get away from the skew towards older smokers is
6 because it's common knowledge in the cigarette industry
7 that older smokers quit at a higher rate than younger
8 smokers?
9 MR. BEACH: Objection, argumentative, assumes
10 facts not in evidence, asked and answered. You can answer
11 the question.
12 A. I mean, the problem with the Winston situation
13 was laid out right there on that chart. The brand had been
14 declining since 1970. And the issue is laid out pretty
15 clearly on the image/product chart which says it was a
16 large popular brand that was considered a quality brand,
17 but it has an older image and it's too strong and harsh.
18 And it is a fact that 80 percent of the franchise is over
19 35 years of age, and as the second point says, they're
20 price sensitive. There's a slew of reasons why Winston was
21 declining. What I have focused on since I had Winston was
22 building a better image and a better product perception,
23 and we did that with the No Bull idea, and it's attracting
24 adult smokers of all ages, so.
25 Q. Was it known by you that older smokers quit at a

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higher rate when this -- during this time period that this document was done in?

A. That may well be, I may have heard that, that older smokers quit at a higher rate.

Q. Okay. Well, you say that may well be, I might have heard that. Did you actually hear that?

MR. BEACH: Hang on a second. That's argumentative, it's improper. He answered your question, Mr. Cassidy. You're not going to verbally pound your fist on the table to get a different answer out. He just answered your question.

MR. CASSIDY: I'm trying to get an affirmative answer as opposed to --

MR. BEACH: Don't harass this witness, please. Ask your next proper question --

MR. CASSIDY: Counsel, do not --

MR. BEACH: -- or rephrase the existing question. He answered your question. I won't have you harass the witness.

MR. CASSIDY: Counsel, I think it's rude to interrupt each other when we're speaking, and I'd ask you to stop interrupting me.

MR. BEACH: All I'm asking is for you to treat this witness fairly and with dignity. Please ask your next proper question, or maybe what we ought to do since we're

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about fifteen minutes over on our break, is just go ahead and take a little break right now, come back and finish this thing up if you're done with this document. If you're not done with this document, why don't you finish.

A. I can make a statement to this regard.

Q. Sure. Sure.

A. Quitting rates and the like have never been a topic that I have studied closely in the marketing of brands. I may have been exposed to that type of information, but again, if we're referring to Winston, which this document is, the problem with Winston is it had no positioning, the product was disliked by a lot of adult smokers, and that's what No Bull was designed to do. And the amount -- No time and effort was spent since we started this project until today thinking about how do you do something or correct the fact that older smokers quit at a higher rate. The entire focus has been to put a -- What she says here, no compelling positioning. What I have striven to do over the past three or four years is to eliminate no in that sentence, and that's all I've done.

Q. Okay. I have a few further questions on this topic. Is one of the reasons why higher smokers might quit at a greater rate is that they have a better appreciation of the health risks of smoke?

MR. BEACH: Objection, calls for speculation,

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lack of foundation.

Q. If it's speculative to you, say so.

A. It could be. I think health concerns go up as people age. That's not a surprising statistic.

Q. So younger people have less concerns over health than possibly older people?

MR. BEACH: To the extent that that question purports to characterize the witness' testimony, I'd object to it.

MR. CASSIDY: I am not trying to characterize the testimony.

MR. BEACH: Okay. I'm sorry. I'd reiterate my prior two objections to your preceding question in response to this pending question. It probably needs to be reread.

A. I don't -- You know, it's another topic. Am I versed in health concerns among the population at large or smokers? No. As it relates to my job, the warning is there, we're discussing what did they mean by higher quitting rate. It's probably a fact. It's probably something I have been exposed to. It's captured a minimal amount of my attention in trying to improve the performance of Winston, if any.

Q. Okay. Let's go on to the next point here. 35 plus price sensitive franchise. Is the implication of that statement that persons 35 and older are more -- Is the

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1 implication of that statement that smokers 35 and older are
2 more price sensitive than smokers under the age of 35?
3 A. I think that statement does imply that smokers
4 over the age of 35 who are in Winston's franchise are price
5 sensitive.
6 Q. Okay. Can the corollary conclusion then be drawn
7 that persons under the age of 35 buy cigarettes in part, at
8 least, for image and price is not as great a factor to
9 them?
10 A. I think it is a fact that as smokers age, and if
11 you look at the savings segment development, you will see
12 that it's more developed among adult smokers of a higher
13 age.
14 Q. But I was looking at the reverse. The younger,
15 or the under 35, --
16 A. I don't think so.
17 Q. -- are they more attracted to image than price?
18 A. I'm sorry. My fault.
19 Q. It's two days. I'm surprised that hasn't
20 happened before. Are they more attracted to image than
21 price?
22 A. I think adult smokers and adults -- Adult smokers
23 are just as attracted to image, a younger age or older age,
24 or in other product categories you can make that case. I
25 would serve up Lexus automobile owners as a fairly older

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1 group. They surely appear to be interested in the image of
2 that automobile, and I think image is important to all.
3 What I will conclude from this is that, yes, I think price
4 sensitivity in the cigarette market goes up with age.
5 Q. Well, you have given an analogy to the car
6 market. But in terms of the cigarette market --
7 MR. CASSIDY: Well, that's argumentative. Let's
8 take our break.
9 VIDEOGRAPHER: We're going off the record at 3:35
10 p.m.
11 (There was a break taken.)
12 VIDEOGRAPHER: We're back on the record at 3:55
13 p.m.
14 MR. CASSIDY: Okay. Let's introduce this as the
15 next exhibit.
16 Q. Mr. Leary, do you understand that you're still
17 under oath?
18 A. Yes.
19 (Exhibit #38 marked for identification.)
20 MR. BEACH: Thank you.
21 Q. I'll represent to you, Mr. Leary, that this is
22 how the document was produced by counsel for R.J.R.
23 Reynolds, but it might possibly be two different documents
24 that are stapled together.
25 (Ms. Marilyn R. Forbes joined the deposition.)

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A. Okay.

Q. Can you identify what this document or documents are?

A. This, I believe, is a document that Doug Shouse produced as he was working on a project simultaneous to my efforts to find a repositioning idea to improve Winston's performance among adult smokers.

Q. Okay. And having looked at this document, does it trigger a memory in your mind as to what project Winston ST was?

A. It sure does.

Q. Okay. Can you please state what project Winston ST was

A. It was an effort to identify an alternative repositioning for Winston that was developed simultaneous to my efforts, basically trying to explore as many options as we could to confirm that whatever path we chose to go down would be the most effective among adult smokers.

Q. What did the ST in project Winston ST stand for?

A. I'm not sure. It was a different code name developed by Doug Shouse.

Q. Well, what do the project or the words MM stand for in project Winston MM?

A. It was probably just letters that we used to signify the brand -- I mean, the project, easy to say.

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Q. But the letters MM themselves did not have any independent meaning?

A. They had meaning to me, but in terms of how it was used, it was just a code name for the project.

Q. Go back to one topic that we discussed earlier. Project EW, did the E and the W stand for anything?

A. It was primarily just the code name for it.

Q. Okay. In the ultimate production and manufacture of new Winston cigarettes were components of project ST incorporated?

A. One key component was.

Q. And what component was that?

A. The packaging design.

Q. So was packaging design ever discussed within project Winston MM?

A. Yes, project MM had a different pack design than the previous Winston.

Q. What was the design with respect to project Winston MM?

A. It was more similar to the previous Winston pack, and it had a picture of the founder of R.J. Reynolds, Mr. R.J. Reynolds, on the back of the pack.

Q. Smoking a cigarette?

A. Yes.

Q. Did it look like a grandfather smoking a

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cigarette?

A. It looked like R.J. Reynolds smoking a cigarette.

Q. But R.J.R. -- R.J. Reynolds as an old man, correct?

A. This picture was him, I'm not sure how old he was. He had a goatee, and it looked to be gray hair.

Q. Okay. Why don't we look into this document a little bit. Let's go to 8475. And I'm looking at causes here. And the fourth bullet point is "Nickel and Dime" the product quality. Would that be an accurate description of the product quality of Winston cigarettes in the -- prior to what is dated here as June 11th, 1996?

A. That's a descriptor that apparently Doug Shouse felt was accurate.

Q. Would you share that description?

A. I think that there were some changes made over a long period of time that probably did not improve the product quality of Winston, but I haven't really researched that and don't have a firm position on whether we had actually significantly damaged the product quality.

Q. Okay. Now, going over to the right, the third bullet point uses the word aging again, and states aging franchise. Would you have any reason to believe that the use of the word aging there would be any different than the use of the word aging in the previous exhibit written by

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1 Ms. Beasley that we were looking at before the break?

2 MR. BEACH: Objection, calls for speculation.

3 MR. CASSIDY: I will rephrase my question if you

4 can state on what basis I'm asking the witness to

5 speculate.

6 MR. BEACH: Because you're asking him what the

7 meaning of the use of the word is in this document which

8 you haven't determined that he has, himself, written.

9 MR. CASSIDY: We've already determined that he

10 hasn't written this.

11 Q. Is aging used to mean different concepts within

12 R.J.R. Reynolds when we're talking -- when we're looking at

13 marketing documents?

14 A. Well, aging can refer to any number of things,

15 the age of the brand, the age of its user adult smoker

16 profile, the age of an advertising campaign. I mean, he

17 has apparently used the word aging franchise. In this

18 document it talks about aging accounting for .3 share

19 market loss per year. He's referring to something that

20 I've talked to before, which is Winston is and was a much

21 older brand if you look at its total brand profile.

22 Q. What were some of the other characteristics of

23 project Winston ST that ultimately weren't incorporated

24 into the new Winston cigarettes?

25 A. He developed several campaigns, probably had tag

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lines, may have developed some different products. I don't know. These two programs literally went down completely different paths simultaneously, and I was -- I think in one of these he has a list of the people on his task force, and I wasn't on it.

Q. Okay. Let's go on to 8481.

A. Yes.

Q. I asked you earlier -- I believe I asked you earlier about the word safari. Does looking at this document now trigger in your mind any recognition of what the word safari means in terms of cigarette marketing?

A. No. I may have been exposed to something called safari, but I'm not sure at all what it was.

Q. Well, do you have an understanding of what emotional benefits are in terms of cigarette marketing?

A. I'm not sure what that might be referring to. I mean, the way I would -- If it's even anywhere in the same camp, you know, I talk about the positioning and what is the attitude of the brand, and that's sort of the attitudinal component or benefit of the brand. I don't know where -- what this is specifically talking about though.

Q. Well, benefit of the brand that you're trying to trigger in the mind of the consumer?

A. The image or the attitudinal components is how we

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1 refer to it in the Winston that we launched.

2 Q. Okay. Let's go on to 8491.

3 A. Okay.

4 Q. Okay. I'm looking at point "Address personal and
5 social concerns that inhibit pleasure." Has that been one
6 of the priorities within R.J.R. Reynolds in the 1990s?

7 A. Not to my knowledge.

8 Q. Has it been anything that you have ever discussed
9 before?

10 A. Ever?

11 Q. Yeah.

12 A. When I worked on -- in new brands back in 1988 to
13 1990, we dealt with cigarettes, as he has here, that had a
14 better aroma or smell, and those were at times referred to
15 as social concerns, that your clothes smell better with
16 this cigarette or it doesn't leave a lingering odor. So in
17 that regard, yes.

18 Q. Was -- Do you have an awareness as to whether
19 project Winston ST was supposed to be a no additives
20 cigarette?

21 A. I think they looked at that as part of that
22 project, yes. At one time I think they looked at it.

23 Q. Well, in a -- Would not the defining
24 characteristic of the new Winston cigarettes, at least in
25 terms of its product formula, be that it has no additives?

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A. Yes.

Q. Okay. So do you have any idea then as to, aside from the packaging, what the distinctions were between the project Winston ST and project Winston MM?

A. Well, given that they were -- the project ST was designed to be an alternative search for another positioning, I think Doug made an effort not to go immediately down the same path the other -- my area was going down. So I think at one point they talked about having a no additive product, but it was completely distinct. And I don't really know what all he -- I had looked at some advertising campaigns a time or two, but basically spent no time on it. I had my hands full with my own project.

Q. Okay. Let's go to 8500.

A. Uh-huh. Yes.

Q. Okay. I'm looking at marketing objective, "First transition brand of choice for young adult smokers." Do you have an understanding of what the word transition brand means in this context?

A. No.

Q. Does looking at marketing target, 21 to 29 year old Marlboro smokers, help you understand what the word transition brand means in this context?

A. No, it helps me understand who the marketing

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1 target is that he had in mind here.

2 Q. Have you ever used the term transition brand?

3 A. I don't recall it.

4 Q. Have you ever had discussions with other

5 individuals in which that term has been mentioned?

6 A. I don't recall it. I mean, again, we've talked

7 about what were we trying to do with Winston. If

8 transition means passing from one brand to another on your

9 way to another, my goal was to get 21 plus adult smokers to

10 switch immediately to Winston and not use it as a

11 transition brand.

12 Q. Well, do you have any understanding as to who

13 this memorandum was directed towards, or document?

14 A. I don't know who this was given to. It looks

15 like a fairly sizable assessment of where he was going, so

16 I suspect it was given to his management, who was Lynn

17 Beasley.

18 Q. Okay. If you were writing a document, would you

19 use a term within that document that no one within the

20 company had ever heard before?

21 A. If I intended to explain it to the members that I

22 was presenting it to, I might do that. I may have done

23 that.

24 Q. Okay. Let's go to 8506. I want you to just take

25 a look at this chart that's here.

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A. Okay.

Q. Do the concepts that are developed here or discussed, is this fair to say that this is a flow chart on how to launch a new cigarette brand, or was this specific just to project Winston ST?

MR. BEACH: Objection, calls for speculation and is compound.

Q. Does this flow chart have any application beyond project Winston ST?

MR. BEACH: Same objection, the first.

Q. Does this chart have any meaning to you?

A. It looks like how Doug organized his project. I can look at the top and see the areas that he laid out on how he went through it, you know, some of them make sense. I mean, organize the project, gather information, get consumer feedback, develop ideas. I guess when he says concept qualification go to qualitative research, develop creative, and then make a recommendation all make since as a way you might go through a project in general areas.

Q. Well, if one was rationally developing how to plan out, you know, the analysis and ultimate introduction of a new brand, would these be all steps that you'd want to include within that process?

A. I mean, it varies from project to project. I mean, there's probably -- he's probably got, what,

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1 twenty-five different things here. It could vary from time
2 to time. I would agree that you organize it, you gather
3 input, you get consumer feedback, you develop ideas, you
4 get advertising done, you can -- it's a back and forth,
5 develop ideas, get feedback, back and forth. I would agree
6 for sure that at the end of the day it ends in a
7 recommendation.
8 Q. Okay. I'm looking within some of the steps, and
9 so step number two, gathers key info/input, bullet number
10 one, "Relevant market research (attitude/behavior,
11 switching, demographic, strengths, etc.)." "Target
12 definitions" is the next bullet point?
13 A. Uh-huh.
14 Q. Does that all relate to some of the basic
15 concepts of marketing that we discussed yesterday?
16 A. It could.
17 Q. In terms of getting relevant market research
18 attitude, slash, behavior, does that, again, fall within
19 the term psychographic research?
20 A. It could fall within many categories. I mean, I
21 don't know. It could. You know, to look at attitudes
22 about different cigarettes, what you're proposing, behavior
23 of adult smokers, it could mean any number of things.
24 Q. Okay. Well, was there ultimately a point and
25 time when it was decided to abandon project Winston ST and

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allocate all resources into project Winston MM?

A. Yes.

Q. And what date and time was that?

A. We launched in August, so I would say sometime in the April, May time frame of 1997 we decided -- Well, I don't know when they quit work on project ST. I know when we decided to launch Winston No Bull. I believe they did some research that attempted to quantify the opportunity represented by ST. I was not a part of that. And they went forward to management to decide whether to continue the project or not, and I think the decision was made to stop and go down the Winston No Bull path.

Q. But you don't have a precise memory of the month and year when that occurred?

A. When they stopped work on this? I don't. I was not a part of that process.

MR. CASSIDY: Will you mark this as the next exhibit.

(Exhibit #39 marked for identification.)

Q. Actually, before I ask you a question on this exhibit, I'm going to go back to the preceding one of Winston ST, Rebuilding a Brand. Are you aware as to whether that document was produced in the regular course of business by R.J.R. Reynolds?

A. I assume it was, yes.

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Q. Have you had a chance just to at least glance through the document that's been marked as Exhibit #39?

A. Yes.

Q. Would you go in to -- it's slightly to 9752. Do you see the handwriting on this? It's the cover of the bold text on this page is 1996 Winston operating plan.

A. Uh-huh. Yes.

Q. Do you recognize whose handwriting that is?

A. No.

Q. What is an operating plan?

A. It's a brand plan that lays out what you're going to do.

Q. Have you seen this particular document before? Have you seen the 1996 Winston operating plan before?

A. Yes.

Q. Okay. Did you approve of the Winston 1996 operating plan?

A. Yes.

Q. Okay. Was this document created in the regular course of business for R.J.R. Reynolds?

A. Yes.

Q. Okay. Let's go to 9754.

A. Okay.

Q. Okay. I'm looking at the second bullet point, "Re-establishing Winston as part of target smoker's world,

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psychographic profile 8" dash, "28, 21-34 primary, 21-24 secondary.

A. Yes.

Q. What does psychographic profile refer to?

A. I can't recall what that 8/28 is. There must be some -- I'm not sure. I cannot recall.

Q. Okay. Well, I mean, can I ask you -- Do you have any recall of what the phrase psychographic profile, without this 8/28, means?

A. I really can't recall. I mean, I was a part of this, but I cannot remember what we meant there by psychographic profile. I know what we meant by re-establish Winston as part of target smoker's world.

Q. Okay. Correct me if I'm wrong, is it a possibility that psychographic profile 8/28 refers to a particular study or marketing report?

A. It could. It could.

Q. Okay. Now, I'm here -- I just want to -- I don't want to focus on a particular report. I just want to focus on what does the phrase psychographic profile mean.

MR. BEACH: Asked and answered.

A. I don't recall what that meant. I'm sorry. I just don't recall. I wonder if it's back in here.

MR. BEACH: Maybe you need to take some more time to look through the document, Ned.

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A. What was the date of this? Deliver -- Oh, here's what it means. Now it's coming back to me. This was delivered on 7/7. We apparently had a psychographic study coming in that explored the concept of No Bull and no additives on August 28th. And what we were saying there was there was going to be information coming in to explore the appeal among adult smokers or this idea. That's what it meant.

Q. Was the secondary -- Was there a secondary target age group with respect to the Winston marketing efforts in 1996?

A. I'm sorry. I was looking to figure out what 8/28 meant.

MR. BEACH: 9754 is the bates number.

A. Because I think it did say primary, secondary, didn't it?

MR. BEACH: I mean, perhaps the question was divorced from this document. I'm not sure.

A. Yeah.

Q. No, the question is based upon this document.

A. 21-34 primary, 21-24 secondary.

Q. Okay. What does 21-24 secondary mean?

A. Just trying to say that the primary target was 21 to 34 with a secondary emphasis on 21 to 24.

Q. Is that age breakdown also true with respect to

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1 the current marketing efforts of R.J.R. Reynolds with
2 respect to new Winston cigarettes?
3 A. Could you say that again? I'm sorry.
4 Q. Are you trying to target new Winston cigarettes
5 towards persons primarily 21 to 34, but with a secondary
6 emphasis on individuals 21 to 24?
7 A. Adult smokers 21 to 24, yes. And now that I've
8 had a chance to look at this document, I recollect that
9 this was, if I'm not mistaken, the first cut at the 1996
10 Winston operating plan where this was a compilation of the
11 various areas and what we were attempting to do. It was
12 our first stab at an operating plan that we gave to Lynn in
13 July, and our operating plan process goes into August and
14 September. So I do recall this now, which is why there's
15 so many notes on it, is that there are many points of
16 discussion in this. But that's what this is, as opposed to
17 the approved operating plan like you spoke to earlier, this
18 was the first draft in an effort to build an operating
19 plan.
20 Q. Okay. When you say we, who are you referring to?
21 A. My business unit, my group.
22 Q. And does that include you also?
23 A. Yes.
24 Q. Okay. But let's go back to the preceding
25 question then. Is that -- Was the statement 21 to 34

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1 primary, 21 to 24 secondary, was that true ultimately with
2 the final operating plan that was adopted?
3 A. I know that the target remains to this date 21 to
4 34 year old adult smokers, and we do have some programs I
5 believe that go more towards 21 to 24, but it's a secondary
6 group.
7 Q. Okay. Let's go to 9757.
8 A. Okay.
9 Q. I'm looking at business objective. And the first
10 one here is "Winston repositioning impact similar to Camel
11 75th with significant greater loss due to quitting/aging?"
12 Do you know who was the actual author of this document?
13 A. I had a hand in it.
14 Q. Well, would you have then had a hand in coming up
15 with determining the Winston reposition with respect to the
16 issue of quitting and aging?
17 A. I may have, yes.
18 Q. Could you describe what that would mean?
19 A. That means as it's laid out down here, Winston
20 was a much older brand than Camel.
21 Q. But what's the Winston repositioning impact refer
22 to?
23 A. It refers to how effective we're going to be at
24 repositioning this brand and rebuilding the business due to
25 the repositioning.

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Q. What does OU refer to under smokers?

A. That refers to adult smokers of other competitive brands that occasionally buy your brand, in this case Winston. Or occasional user is what it actually stands for.

Q. And was does UB stand for?

A. Usual brand.

Q. Okay. So as I look at what Camel did in 1988, is it fair to say they had a rather significant impact on occasional users of the Camel brand?

A. Yes.

Q. And by impact, does that mean that they then became regular Camel users?

A. Not necessarily. These could have been adult smokers of another brand that tried Camel and occasionally bought it and then went back to their -- to their usual brand.

Q. I see. Okay. Well, what about UBs then? Does the 13 percent mean that there were 13 percent more people that because usual brand users of Camel on the basis of the Camel repositioning in 1988?

A. Yes.

Q. Okay. Was this document created in the regular course of business for R.J.R. Reynolds?

A. Yes.

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Q. Let's go to 9773. What's a discovery hub?

A. This was where we would take this product out to adult smokers in 21 and plus bars and introduce them to the new Winston.

Q. And what is a fauxcus group?

A. Fauxcus group.

Q. I was trying to pronounce it different, obviously. Well, who are peer influencers?

A. These are some of the adult smokers that we would talk to to get their input on the marketing programs.

Q. Well, how does -- Peer influencers are adult smokers, but what's unique about a peer influencer as opposed to any other adult smokers?

A. We would -- We would talk to adult smokers, for instance, a bartender who interacted with other adult smokers on a regular basis, and get their input.

Q. Okay. Would those be people selling cigarettes?

A. Sometimes they sell cigarettes, yes.

Q. Okay. Who are Winston deadheads, slash, java slackers?

A. I think the deadhead thing referred to, as it says here, follow bands. And java slackers were people that frequented coffee houses. This is apparently -- This was a program I believe developed by C. Nicholson where she came up with some creative names for the program. And in

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both cases we were talking to adult smokers 21 years of age or older.

Q. Well, leaving out the word Winston, do you have any understanding of what deadhead refers to?

A. I think that refers to people that follow the Grateful Dead.

Q. And what's a java slacker?

A. I'm not sure. I think that's a term she made up.

Q. Could it relate to people that frequent coffee houses?

A. Absolutely. As I said earlier, I think it's people that frequent coffee houses.

Q. Do you have any ideas as to the age range of these individuals?

A. The target for this program was 21 to 34 adult smokers.

Q. Yeah. But particularly someone who's a java slacker?

A. I think the target for this was adult smokers.

Q. But possibly adult smokers 21 to 24?

A. Could be.

Q. As opposed to adult smokers 25 to 34?

A. Could be adult smokers in the 21 to 34. It could have reached adult smokers 21 to 24.

Q. Okay. Let's go on to 9777.

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A. Uh-huh.

Q. What's the age make-up of a younger adult smokers?

A. That could range anywhere in the 21 to 34 adult smokers age group. The point that was being made here was that Winston had been not marketed for quite some time in any sort of impactful way, and one of the things we wanted to accomplish was to have adult smokers see Winston on the landscape.

Q. But I'm just asking about the term younger adult smokers.

A. Well, there's no deference for what does that mean. It could be part of 21 is 34. It's oftentimes used to describe 21 to 24 adult smokers.

Q. Let's to go 9795. What does this show?

A. The point of our analysis of continuity, and I'd have to redecipher this chart, but it basically shows that we did not believe that Winston, entering into a continuity program for adult smokers, was a prudent course of action.

Q. What's a continuity program?

A. That's a program that's designed to get adult smokers to purchase a brand in a continuous way in order to receive premiums for proofs.

Q. Such as Camel cash?

A. Right, and such as Marlboro -- whatever they

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1 called it -- miles.

2 Q. Looking at this chart under total Marlboro

3 smokers 14,850 M. Does that stand for 14,850,000 Marlboro

4 smokers?

5 A. Probably.

6 Q. Does R.J.R. Reynolds have a rather precise

7 understanding of how many total smokers smoke each brand in

8 America?

9 A. We track among adult smokers by what brands they

10 choose. And through extrapolation, I assume that that's

11 how we came up with that. But we have what we call share

12 of smoker, and we track what brands adult smokers choose.

13 Q. Do you spend a fair amount of money obtaining

14 that data from different sources?

15 MR. BEACH: Objection to the form of the

16 question.

17 A. What's fair?

18 Q. Well, I mean, you tell me.

19 A. It costs money.

20 Q. How much does it cost to --

21 A. I don't know.

22 Q. You have no idea what your contract is?

23 A. I don't handle the research. That's another

24 area. But it costs money to track our business, yes.

25 Q. Okay. Let's go to 9797. Can you give me an

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estimate as to how many focus groups you operated with respect to Winston cigarettes in 1996?

A. This program here?

Q. No, I'm just using this as a springboard for a general question.

A. Well, in general how many focus groups in 1996? Well, we probably went out maybe ten to twelve times and talked to four or five groups at a time. Now, that's distinct from this program, but that's general qualitative research.

Q. Sure. And are you doing more focus group sessions in 1998?

A. Yes, but much fewer.

Q. What does that mean, yes, but much fewer?

A. We're doing focus groups in 1998, but less than we did in 1996 by a large margin. Primarily because we're not in a developmental mode as we were then.

Q. Okay. Why would you want, going back to 9797, the moderator to be young, hip and a peer?

A. This was designed if you're going to go out and talk to 21 to 34 year old adult smokers, or 21 to 24 adult smokers, you would prefer the moderator not to be someone that they cannot relate to, which we often -- often use both. We use one moderator who's fifty-something, and in this case this program used someone who was more their age.

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Q. What's hip mean?

A. Relevant to them, shares their attitudes and lifestyles.

Q. Okay. Let's go to the next page. Where were these focus groups going to operate?

A. I think this is the intention of where they would operate, twenty cities.

Q. Would these be the twenty largest cities in America?

A. I don't know.

Q. Well, do you have any memory now as to what cities this particular focus group plan was operating in?

A. Well, if I'm not mistaken, this was a launch plan or a proposed or potential draft of a launch plan for the national launch of the Winston proposition. This was done in July of 1996, and we did not launch until August of 1997, so thirteen months. The plan changed dramatically, and I'd have to go back and get take actual launch plan.

Q. Do you think you did focus groups in California?

A. I don't know.

Q. How about Massachusetts?

A. I don't know.

MR. CASSIDY: We need to take a break to change the video.

VIDEOGRAPHER: We're going off the record at 4:38

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p.m. This is the end of tape number seven.

(There was a break taken and Ms. Forbes adjourned the deposition.)

VIDEOGRAPHER: We're back on the record at 4:50 p.m. This is the beginning of tape number eight.

MR. CASSIDY: Could you please mark the next item as the next exhibit.

(Exhibit #40 marked for identification.)

Q. Mr. Leary, having taken a look at Exhibit #40, are you able to identify what this document is?

A. Yes.

Q. And what is this document?

A. I believe this is a document that is a presentation we made to the regional sales managers about the potential launch of the Winston repositioning.

Q. Can you give me a date for when this document was created?

A. It looks like it was created in September.

Q. Of 1996?

A. That's right.

Q. So approximately one year before the launch?

A. Yes.

Q. Okay. When you say we, were you part of the presentation?

A. I gave it.

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Q. You gave it. So are you the author of this document?

A. Yes.

Q. Okay. I presume -- Was this document then created in the regular course of business for R.J.R. Reynolds?

A. Yes.

Q. Okay. Where was this meeting or presentation occurring?

A. In the Plaza Auditorium at Reynolds.

Q. How many people were at this presentation?

A. Seventy-five, hundred.

Q. And were these people brought in from around the country or --

A. Yes.

Q. How often -- Do you have, on a regular basis, presentations to such individuals as occurred at this event in September of '96?

A. Fairly regularly, but during the moving up towards and preparing for the launch, and then going out to the sales force and showing them the launch plan on a pretty regular basis. In other words, the timing was such that I needed to be talking to a lot of people about this.

Q. Okay. And I'm sorry. I don't have this precise, were these the regional sales directors plus important

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1 people underneath them, or can you give me a better
2 description of the audience?
3 A. I think it was both the area vice presidents, as
4 well as the regional sales managers.
5 Q. And that adds up to approximately seventy-five
6 people?
7 A. Well, and their support staff will probably get
8 you to seventy-five to a hundred people. There were people
9 in the room from both internal as well as external. But
10 the focus of the meeting, if I'm not mistaken, was to
11 present our plans to the regional sales managers.
12 Q. And these regional sales managers and the area
13 VPs, are they just on Winston, or they work for R.J.R.
14 Reynolds and this was to inform them with respect to the
15 Winston product?
16 A. This was to inform them of the entire Winston
17 repositioning.
18 Q. Okay. But if you have an area VP, does he or she
19 work just on Winston, or does --
20 A. Everything.
21 Q. Okay.
22 MR. BEACH: Ned, let him finish his questions.
23 WITNESS: I apologize.
24 MR. BEACH: It just makes for a cleaner record.
25 Q. Okay. Let's go into the document a little bit.

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1 Looking at internal page 9 of the document, does this
2 trigger in your mind or memory as to whether you have seen
3 or heard the phrase dying brand before? It's actually --
4 it's much earlier in the document.
5 A. You know, can I back up and make another
6 statement? I gave several launch presentations. One was
7 to the Florida sales force when we launched the test
8 market, and this whole concept of -- was given several
9 times. And I'm just trying to pin down whether this was
10 the one that I gave to the Florida sales force, or was this
11 the one to all the regional vice presidents. And I'm just
12 trying to -- and regional sales managers. I'm just trying
13 to figure that out.
14 Q. Okay. Sure.
15 MR. BEACH: Let me make a suggestion, Ned. It
16 seemed to me that you flipped through it pretty quickly
17 before. Why don't you take another minute or two and make
18 sure that you're acquainted with this document as he gets
19 into questions about it.
20 A. This was for the regional sales managers in
21 preparation for the national launch.
22 Q. Okay. Thank you. And it occurred in September
23 of '96?
24 A. Well, I base that on the fact that this says
25 September. I don't recall exactly when the meeting was,

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1 but this document was put together in September it looks
2 like. I can't recall exactly when the meeting was.
3 Q. Okay. But the launch then -- the national launch
4 then was actually a fair amount of time thereafter if this
5 meeting was in September of '96?
6 A. It may have been after that. I cannot recall the
7 date of the meeting.
8 Q. Was there any, so to speak, --
9 A. It might have been in the first quarter of '96 to
10 tell you the truth. This speaks to May launch, and I can't
11 recall to when the meeting was.
12 Q. A May launch of '97 that would --
13 A. I believe that's the date that this would
14 indicate.
15 Q. Was there ever, so the speak, a hold put on the
16 anticipated launch date, and then subsequently the launch
17 occurred?
18 A. Yes, the launch was postponed.
19 Q. Who postponed the launch?
20 A. My boss and Andy Shindler.
21 Q. Was Mr. Goldstone involved in that?
22 A. I don't know.
23 Q. And then who took the hold off?
24 A. I received word that we were going to launch from
25 Andy Shindler and my boss.

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Q. And was that done in consultation with Mr. Goldstone?

A. I don't know. As we discussed yesterday, Mr. Shindler reports to Mr. Goldstone. I'm pretty confident they discussed this issue given its importance to Reynolds Tobacco, but how that decision was made, I don't know.

Q. Okay. Let's go back to internal page 9 -- maybe it would be better if I identify the bates number, 3888.

A. Okay.

Q. Does looking at this page trigger in your mind any recall as to whether you have used the phrase dying brand in reference to Winston cigarettes?

A. Yes.

Q. And have you described the Winston cigarette as a dying brand?

A. This was in general about how to fix a dying brand, and one of those brands -- the key brand it's talking about is Winston.

Q. What does a dying brand mean?

A. A brand that's steadily losing business year after year after year.

Q. And if we take a look at 3890 on page 11.

A. Uh-huh.

Q. Was it steadily losing business to Marlboro cigarettes?

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A. Marlboro was certainly gaining while Winston was declining. This doesn't really speak to where the business was going, it just speaks to the two phenomenons taking place simultaneously.

Q. Okay. Well, let's to go the next page please, 12, which is 3891.

A. Uh-huh.

Q. As reflected in this chart here, was Winston, in particular, losing a share of market within the 18 to 24 year old age bracket?

A. Well, this chart indicates that in 1985 7 percent of Winston's business was made up by adult smokers 18 to 24, and in 1995, ten years later, 3 percent of its business was made up of adult smokers 18 to 24. So there was some decline. The Winston profile was made up very little of 18 to 24 adult smokers in '85, and that was the case in '95 too.

Q. But isn't that more than a 50 percent drop in the 18 to 24 year old age group within a ten-year period?

A. 3 is less than 50 percent of 7, yes.

Q. So the most significant percentage -- Is it true to say the most significant percentage dropped within an age group, as identified on this page, was within the 18 to 24 year old age group?

A. This chart refers to what's known as a profile.

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This isn't percent of total adult smokers 18 to 24 that smoked the brand. This is the profile of the brand. So there's a difference there. This is the make-up of Winston.

Q. What is the difference -- What is a profile of a brand then?

A. A profile is -- Looking at the business and identifying what groups, or in this case how does the adult smoker group that selects Winston, how does that profile. It's a percentage within the brand as opposed to looking at the total amount of adult smokers 18 to 24 that choose the brand. It's just two ways to percent it.

Q. Does it give you an accurate idea --

A. For instance, here's an easy way to look at it. In 1995 24 percent of Marlboro's business was among adult smokers 18 to 24, and that represented 61 percent of all adult smokers 21 to 24.

Q. Well, you answered my next question. Is there any other fundamental concepts that are depicted here on chart 12 that we haven't discussed right now, such as pack, carton, box and pack?

A. Yes, this also speaks to the facts that Winston's business is much more of a carton business than is Marlboro's, and it's much more a soft pack business than is Marlboro's among adult smokers.

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Q. What's the significance of pack versus carton sales?

A. It's another way of looking at the business to show that Winston on this chart was dramatically different than Marlboro.

Q. Well, is there a reason why a cigarette company would want to have a greater percentage of sales by pack than by carton?

MR. BEACH: Objection, lack of foundation.

Q. Would a cigarette company want to have a greater percentage of sales by pack than by carton?

A. It depends on what the objectives are, and this is just another way to cut the information.

Q. Sure. But the fact that Marlboro was almost a 50/50 split, was there any particular reason why that was distinguished from Winston, which had a much wider gap between pack and carton?

A. Well, let me say this, that the two previous charts pointed out that R.J.R. Reynolds has a brand that has been declining for over twenty years, but Marlboro, on the other hand, has been growing. The point of this chart was to point out their significant differences between those two brands. One is the profile of adult smokers that choose Winston was much older than that of Marlboro. Another significant point, particularly for the sales

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1 force, is the fact that we have, as depicted on this chart,
2 Winston had very little box business. That speaks to
3 distribution of box products and display of box products,
4 and that was the point was to highlight to the sales force
5 where are the major differences between Winston and
6 Marlboro.
7 Q. Well, going back to pack and carton. Is there a
8 greater profit made on the sales of individual packs as
9 opposed to sales of cigarettes by carton?
10 A. No.
11 Q. Okay. Is there --
12 A. There is a difference between where those
13 products are sold.
14 Q. Okay. Is there generalizations that can be made
15 upon the age of the consumer who favors cartons as opposed
16 to the age of a consumer who favors packs?
17 A. Yes, there are more adult smokers in the older
18 age range that would favor carton, versus the adult smokers
19 in the younger age range.
20 Q. Can that same generalization be made with respect
21 to the division between box and soft pack sales?
22 A. Yes, more adult smokers in the older age range
23 will smoke a soft pack, and more adult smokers in the
24 younger age range would smoke a box.
25 Q. Okay. Thank you. Let's go on to 3924, which is

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internal page number 45.

MR. BEACH: 3424 did you say?

MR. CASSIDY: Yes.

A. Okay.

Q. Does this -- What does this show?

A. This shows the back of the two packages that were tested in Florida.

Q. Was this what you were referring to before in terms of the packaging for project Winston MM?

A. Yes.

Q. Can we go to 3931, page number 52.

A. Yes.

Q. Was this an ad that was ever run with respect to Winston cigarettes?

A. Yes, I believe it was.

Q. Okay. And these are some of the additives that you referred to earlier today?

A. Yes.

Q. Are all these additives found in Marlboro cigarettes?

A. In the Marlboro styles that are in the top ten leading brand styles, yes.

Q. How do you know that?

A. Through testing.

Q. And I have seen some ads for Winston cigarettes

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that refer to other leading U.S. nonmenthol brand styles having a 6 percent additives on a dry weight basis. How do you know that?

A. Testing. Laboratory analysis.

Q. Was this ad run on a national basis?

A. No, this ad -- And I believe what it says down here, though it's very hard to see, available in Florida only. I believe this was an ad that ran in the test market of Florida.

Q. At a later point and time was the copy of this ad, at least what's in the other leading brands and then the list here, used in ads that were run on a national basis?

A. I don't think we actually used this execution on a national basis.

Q. Okay. You wouldn't have used this execution in California?

A. I do not believe so, no.

Q. Or Massachusetts?

A. No.

Q. Okay. Let's go to internal page 66, 39 -- 3941, and that's internal page 62. Was this ad ever run?

A. I don't believe we did.

Q. Was there any particular reason why this ad was shown to the -- or part of your presentation?

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A. It was in the mix at that point and time, and I do not believe we ever ran that.

Q. Okay. Let's skip two pages and go to internal page 64, 3943.

A. Excuse me. When you spoke earlier and you were referring to did it run nationally --

Q. Yes.

A. -- no, I do not believe it did.

Q. Okay. Has this ad ever run nationally?

A. The copy has run nationally, I do not believe we used -- In fact, I'm almost sure we did not use that particular visual.

Q. Why was a different visual ultimately chosen?

A. The model was -- we believed we could do a better job with the model. There was some discussion of the way that she looked with the cigarette that we could improve on, so we reshot it.

Q. Did you pick a model who is a different model?

A. I believe she is a different model than in that shot, yes, that ran.

Q. A model who appeared ultimately older than the model that's here?

A. I can't -- I'd to have look at each one and make that determination.

Q. Can you give me an idea as to how old you think

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1 this model appears?

2 A. I know she's at least 25 years of age or older,

3 and looked it in the opinion of us at the time, but it's

4 hard to -- it's hard to see that shot from here.

5 Q. Sure. Have you ever observed that sometimes

6 people can appear younger than their actual birth date?

7 A. Yes.

8 Q. Let's go on to the next page, and this is

9 internal page 65 at 3944.

10 A. Uh-huh.

11 Q. Was this ad ever run either in Florida or on a

12 national basis?

13 A. No.

14 Q. Why not?

15 A. I didn't believe it was -- I mean, some of the

16 ads in here were shown as just examples of the humor that

17 this campaign could have, but some of them were never

18 intended to run and never did, and this was one of them.

19 Q. Well, was this just to have a laugh at the

20 presentation, or was this an ad that was under

21 consideration, but then was chosen not to be run?

22 A. Well, these ad were -- Some were considered and

23 some weren't. None of these, I don't believe, were

24 considered to run.

25 Q. Well, what does the phrase "My smokes don't need

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padding either" refer to in this ad?

A. I think it's referring to she doesn't have any padding in her -- it's looks like a bathing suit.

Q. Would it then be referring to her breast size?

A. I think it is.

Q. Okay. How about the next page, 66, bates number 3945. This ad states "My cigarette is 100 percent tobacco, and if I wore underwear, they'd be 100 percent cotton." Was this ad ever run either in Florida or on a national basis?

A. No.

Q. Was this ad ever under serious consideration to be run?

A. No.

Q. Well, why was this -- Let me rephrase this. Was this a slide show that was this given?

A. Yes.

Q. Okay. And so this is --

A. Now, let me back up here. Now that I think back, I'm not sure these slides were ever shown in that presentation.

Q. This is not an accurate depiction of the presentation that you gave in that meeting?

A. Well, I think most of it is, but I'm thinking back as to whether or not we actually showed -- We may

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have -- I'm sorry. But we may have shown them in this presentation, but as we took this out into the field, we did not show these. So they may, I cannot recall.

Q. So this presentation became a model that was used in subsequent presentations?

A. It did. But I do recall that these ads were not shown. We took this on the road. This was --

Q. So it was modified over time?

A. Yes.

Q. Was there any particular reason why you didn't show these ads that we've just been discussing in subsequent presentations?

A. Decided it wasn't appropriate to show them out in the field.

Q. And was there any particular reason why it was decided that it wasn't appropriate?

A. The judgments of those that were -- the area vice presidents and ourselves that we decided not to show them.

Q. Well, was part of that judgment that these ads were viewed as offensive to women members of the audience that might have been attending those sessions?

A. It was just a judgment. We decided not to take them out. That could have been part of it, but it was decided that we shouldn't take these out.

Q. Well, would you describe this as, so to speak,

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1 male locker room humor?

2 A. I don't know that I'd describe them as such.

3 Q. Well, would you have any definition of what male

4 locker room humor would be?

5 A. I guess it would be jokes that males would tell

6 in the locker that some that weren't in that environment

7 might not find as humorous as those in it.

8 Q. And would a component of those jokes be that

9 they're derogatory towards women?

10 A. I guess it could be. I can tell you that these

11 ads were shown to women that were in the audience during

12 the presentation, and they found them humorous, but they

13 weren't taken out on the road.

14 Q. Was it primarily a male audience though?

15 A. I think there's probably more men in there than

16 women.

17 Q. Okay. Let's go on to the next one, 67, bates

18 number 3946. The copy this one reads "Okay, I faked my

19 orgasm, but my cigarette's real." Again, I assume that

20 this ad -- Was this ad run on a national or a state basis?

21 A. No.

22 Q. What would be the problem with running this ad in

23 terms of the cigarette advertising code?

24 A. I don't know. It didn't run.

25 Q. Well, would this ad, if it was given to you by

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one of your assistants, pass your desk if you were applying the cigarette advertising code to it?

A. I wouldn't recommend running this ad nationally just because I think it's too edgy. It runs the risk of some people seeing it, some adult smokers, and not liking it.

Q. But from your general knowledge of the cigarette advertising code, can you think of any particular aspect of the code as to where this ad might be deficient?

A. The cigarette advertising code shows that you will not use smoking in such a way that is essential to success or attraction to the opposite sex. I don't think this ad attempts to do that at all. What it attempts to do is make fun of a very adult topic, and that is faking orgasms. And in this case it's doing the juxtaposition of faking an orgasm, but my cigarette's real. So if your question is does it run afoul of that particular part of the code? I don't think it does. It just think it's a very edgy ad that I don't think I'd recommend running nationally or in test market, which we didn't do.

Q. Well, do you think the ad is tasteless?

A. I personally think it's funny, and that's been the reaction I've shown to most people. But it didn't run, and that's the end of that -- that's the answer to that question.

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Q. Well, just using this hypothetical here, is it possible then to have an ad that doesn't run afoul the cigarette advertising code, but, so to speak, is too edgy, and therefore you reject it?

A. Yes.

Q. Okay. Let's go on to 119 internal page number, 3998. Actually, I apologize if I've asked you this question with respect to this document, but was this document created in the regular course of business by you as an employee of R.J.R. Reynolds?

A. Yes.

Q. Okay. What does this, I'm going to use the word, call of the slide show refer to?

A. It refers to -- You mean what is the point it's trying to make?

Q. Yeah. I looked at this and I didn't understand.

A. This was designed --

Q. I apologize. I don't mean to create a judgment here, I just might have been tired when I was looking at it.

A. This was designed in part of this section of the presentation -- I'm looking to see -- I started this presentation, I believe one of the first charts is why you don't believe me, and the last part of this presentation was designed to address skepticism on the part of the sales

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1 force because they had been asked to attempt to fix Winston
2 more than once, and I was attempting to address their
3 concerns. One of the debates or concerns that has gone on
4 for years is do we have a product that is better than
5 Marlboro? And some would hold that until you have that,
6 you're never going to improve Winston's performance among
7 adult smokers relative to Marlboro. This was designed to
8 provide my perspective on that issue. And it goes through
9 and it speaks to the fact of Camel has been growing among
10 adult smokers and it doesn't have the same taste profile.
11 Newport has been growing among adult smokers and it doesn't
12 taste like Salem, Kool, or Marlboro. And in the case of
13 this Salem and Kool used to be much bigger than Marlboro,
14 but it has gained in market share among adult smokers
15 despite that.
16 And that it goes on to talk about Pepsi is
17 perceived to better than Coke in blind tests, likewise
18 Wendy's is believed to make a better burger than
19 McDonald's, and even Budweiser is not perceived in blind
20 testing to be the best product. So the bottom line point
21 is that it is the entire marketing proposition that will
22 attract adult smokers, as opposed to just the product
23 components and its performance.
24 Q. And is that what you mean then by position appeal
25 equals product perceptions?

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A. Yes.

Q. Is it fair to say then that appeal is more important than taste?

A. I think you have to have a good tasting product, but it's just as important to have a powerful positioning.

Q. And a positioning would be image?

A. Well, the positioning is the entirety of it. But, again, the point on this is that product alone is not it.

MR. CASSIDY: Okay. I'd like to introduce this as the next exhibit, please.

(Exhibit #41 marked for identification.)

Q. This document was produced by R.J.R. Reynolds as I've given it to you in terms of a stapled section of what appears to be different notes by different individuals. So I'm just alerting you to that. This does not appear to be one solitary document as originally created. Okay.

And I just -- I don't want you to have to look through everything here because I'm only going to ask you about one section within it. So if you can go to 2685. And I believe that this is the beginning of a new section of notes within this document. Do you have any idea, looking at the bottom on this page where it says please copy and the little slip here, who the initials SBW belong to, if that is an SBW?

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A. I don't know.

Q. Okay. Do you recognize whose writing this might be?

A. I do not.

Q. Okay. Do you recognize the initials WLB or GLP?

A. Not right off I don't. I'd have to look through a bunch of names to see if I could figure it out.

Q. Okay. Well, let's go to the next page, which is 2686. And it has there at the top Winston status 1/9. Why don't you take a look at this for a second and then I'm going to ask you a couple questions.

(Witness complied.)

Q. Can I turn you back to 2686. Having looked at this document, do you have any better idea as to whose notes this might belong to?

A. I could speculate, but it would be some stretching, and I don't think I should.

Q. Do you think it's a senior person within R.J.R. Reynolds?

MR. BEACH: Objection, calls for speculation.

MR. CASSIDY: Well, we're probing here.

MR. BEACH: My objection stands to the question.

A. The title of it is Winston status. The person apparently was in the Winston status on January 9th. I'm the most senior person in the status, so whoever it is is

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below me, so -- or there is no one in the status at my level.

Q. What is Winston status, what does it mean?

A. It's a status meeting that I used to have once a week with everybody involved with Winston.

Q. Okay. Would it be fair to say that this is notes from someone at least within the inner circle of Winston, so to speak?

MR. BEACH: Same objection.

A. It's someone that attends the Winston status meetings, and I had a lot of people who were involved in Winston at weekly status meetings.

Q. Okay. But do you have any doubt as to what this was and that these are notes from an R.J.R. Reynolds employee?

A. I suspect they are.

Q. Okay. I'm looking at point number three, which is actually the first number three that's circled two-thirds of the way down. And I'm going to read this, and you can disagree with me if you think my reading is different, but "Goldstone meeting how is this different from Select? Ned addressed in meeting but didn't specify how to us." Do you have any -- Well, I guess here's my question, is this referring to a meeting that you had with Mr. Goldstone and that you then reported to the group

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meeting with respect to Winston status?

A. It may be.

Q. Okay. Does this trigger in your mind now any memory as to whether you discussed with Mr. Goldstone the approval of the launch of the new Winston cigarette?

MR. BEACH: Object to the form of the question to the extent you're mischaracterizing the witness' past testimony on that subject.

A. I testified before that I had presented the Winston proposition to Mr. Goldstone, and I think we discussed at length how was a decision made, and that's where I talked about I'm not sure how he and Andy made the decision. But I presented the proposition probably more than once to him, and this does look to be a discussion I had with -- in the status meeting as to some questions he had.

Q. Okay. Let's go to the next page, and I'm reading at the top, "Research will have to be exceptional for Ned to change to ST." What does that refer to?

A. The package.

Q. Which you ultimately did adopt?

A. I did.

Q. Okay. As we go down a bit I'm looking next to point number -- or underneath point number eight, and I'm reading I guess the second or maybe the third sentence

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here, "We've cracked the --" Can you tell me what that next word would symbolize?

A. Looks like Marlboro to me.

Q. Okay. "We've cracked the Marlboro taste thing and the sales force said it didn't matter, that people were smoking image." Is that an accurate reflection as to what was occurring with the Winston cigarettes at that time?

A. Well, what I -- As it relates to Winston cigarettes? This appears to be a representation of what the sales force thought in Florida.

Q. Okay. And was that the reports that you were getting back from the sales force in Florida?

A. The sales force, as I spoke to earlier, there was a long standing discussion or debate within the company, and I suspect it still takes place, that if you don't have a cigarette that tastes better than Marlboro, then you're never going to get an adult smoker to switch from Marlboro to Winston. And what this refers to is, based on this meeting we had in Florida, the sales force was beginning to understand that we were, in fact, in the marketing business and that there is a role for perceptions to play in addition to product performance.

Q. What does the phrase smoking image refer to?

A. That could have been something the sales force said in an effort to describe what I just said, which is

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they understood that marketing and the other elements we do other than as simple promotion and the product performance make a difference.

Q. Okay. Let's go to the next page.

MR. BEACH: Counsel, I just want to remind you that we're -- this deposition terminates at 5:30, which is within a couple minutes, so if you could just try to wrap it up, I'd appreciate it.

MR. CASSIDY: Well, Counsel, I'll just state that at 4:40 there was question as to whether we should take a break, and I did agree, and I asked for it just to be a five-minute break, and it became a ten-minute break. I'm not objecting to the breaks we've taken, but I do think you, on virtue of that, ought to give me five more minutes.

MR. BEACH: Counsel, I said please just try to finish up your questions. This deposition terminates darn close to 5:30.

MR. CASSIDY: Okay. And I'm just saying --

MR. BEACH: I'll try to be accommodating, please just go right ahead.

Q. Okay. I'm going to the next page. It says here -- Well, I have the initials AJS. Do you know who that stands for?

A. Andy Shindler.

Q. Okay. And then it's a little bit hard to read

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here, but I see he'll have to, and I don't know what the next word is. Do you have any idea? It looks like possibly wait?

A. Well, it says AJS with Reggie presentation.

Q. And who's Reggie?

A. Reggie Pasterczyk. Presentation of what he'll see on the 28th.

Q. And is the he'll there referring to Goldstone?

MR. BEACH: Calls for speculation.

A. I don't know that.

Q. Okay. Well, and then "he'll have to wait and get Goldstone's --

A. Well, there's the next meeting right there, 1/28.

Q. Okay. Well, the second he'll, is that referring to Mr. Shindler?

MR. BEACH: Same objection,

Q. The AJS he'll have to get Goldstone's permission?

A. It appears to me from this on 1/22 there was a meeting with Andy in which we reviewed what he'll see on the 28th, 1/28 there's a meeting with Andy, so that's my bet.

Q. Well, looking at this document here and in reference to the "go/no go" on the left-hand side, does that mean that Mr. Goldstone's permission was necessary for Andy Shindler to make the decision to go ahead with the

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launch of new Winston cigarettes?

MR. BEACH: Objection, calls for speculation.

A. I don't know.

Q. Okay.

MR. CASSIDY: I have one final document that I'm just going to ask the witness to authenticate. I'm not going to ask questions upon.

MR. BEACH: Assuming that he's capable of doing that, ask your questions.

MR. CASSIDY: Thank you, Counsel. Could you please mark this as Exhibit #42.

(Exhibit #42 marked for identification.)

Q. Mr. Leary, I've shown you a document that's been marked as Exhibit #42, and it has as its titled in the Re line Camel Product Strategy Meeting. Do you see yourself listed as one of the recipients of this document?

A. Yes.

Q. Do you know if this document was created in the regular course of business for R.J.R. Reynolds Tobacco Company?

MR. BEACH: Objection, calls for speculation.

A. I guess it was.

Q. Okay.

MR. CASSIDY: Thank you very much.

MR. BEACH: We'll reserve our questions for

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trial. Thank you.

VIDEOGRAPHER: We're going --

MR. CASSIDY: I am not done yet. I will note that the defendant, R.J.R. Reynolds Tobacco Company, was under court order to produce all documents with respect to new Winston cigarettes by the conclusion of last Friday, and that earlier this week approximately twelve boxes, it's my understanding, were produced to the plaintiffs, and we would reserve the right to call back Mr. Leary at a later point and time after we reviewed those documents.

MR. BEACH: If you weren't prepared to take this deposition when you started it, that's your problem, not mine, Mr. --

MR. CASSIDY: Cassidy.

MR. BEACH: -- Cassidy. It seems to me we've been exceedingly patient over the last two days permitting you to ask a total of about fifteen hours worth of questions to this gentleman. So you can make your motion to the court. Thank you.

VIDEOGRAPHER: We're going off the record at 5:35 p.m.

(Signature reserved.)

(Whereupon, at 5:35 p.m., the taking of the deposition ceased.)

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Signature of the Witness

4 SUBSCRIBED and SWORN TO before me this
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E R R A T A S H E E T

RE: THE STATE OF CALIFORNIA vs. PHILIP MORRIS, INC.

DEPOSITION OF: EDMUND CONGER LEARY, VOLUME II

Please read the original deposition with care, and if you find any corrections or changes you wish made, list them by page and line number below. DO NOT WRITE IN THE DEPOSITION ITSELF. Return the deposition to this office after it is signed. We would appreciate your prompt attention to this matter.

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CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)

COUNTY OF MECKLENBURG)

I, Marne L. Hamilton, Notary Public, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Marne L. Hamilton

Marne L. Hamilton,
Notary Public in and for
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My commission expires July 28, 2003.

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